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TITLE 24

RETIREMENT AND PENSIONS

(CHAPTERS 1-8 IN VOLUME 25A)

CHAPTER.

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ARKANSAS LOCAL POLICE AND FIRE RETIREMENT SYSTEM

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A.C.R.C. Notes. References to “this chapter” in §§ 24-10-101 to 24-10-105 and 24-10-201 to 24-10-616 may not apply to §§ 24-10-106 and 24-10-107 which were enacted subsequently.

References to “this chapter” in subchapters 1-5 and §§ 24-10-601 to 24-10-616 may not apply to §§ 24-10-617 to 24-10-619 which were enacted subsequently.

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premium tax money in system.

Effective Dates. Acts 2007, No. 803, § 4: July 1, 2007. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that in order to attract and maintain good quality employees, the State of Arkansas should always have as its goal better benefits for its employees; that the employees of the Arkansas Local Police and Fire Retirement System would be

better served by the retirement system for which they work; and that this act is immediately necessary to transfer the retirement benefits of the employees of the Arkansas Local Police and Fire Retirement System from the Arkansas Public Employees Retirement System to the Arkansas Local Police and Fire Retirement System. Therefore, an emergency is declared to exist and this act being neces-

sary for the preservation of the public peace, health, and safety shall become effective on July 1, 2007.”

Acts 2011, No. 17, § 7: Feb. 9, 2011. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the Arkansas Local Police and Fire Retirement System is in place to provide economic security for eligible citizens of Arkansas, that the statutes need amending to account for changes in the economy, and that these citizens need to be immediately covered by these changes. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2013, No. 40, § 18: Feb. 6, 2013. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the local police and fire retirement systems provide economic security for eligible citizens of Arkansas; that the statutes need amending to update and clarify existing law; and

that these changes need to be made immediately. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2013, No. 522, § 5: Mar. 28, 2013. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the local police and fire retirement systems provide economic security for eligible citizens of Arkansas; that the statutes need amending to update and clarify existing law; and that these changes need to be made immediately. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

24-10-102. Definitions.

As used in this chapter:

(1)(A) “Accumulated contributions” means the total of all amounts contributed by a member and standing to his or her credit in his or her individual account in the Arkansas Local Police and Fire Retirement System, together with regular interest thereon.

(B) Beginning July 1, 2009, accumulated contributions shall be separated into after-tax contributions and picked-up contributions under § 24-10-404(f);

(2) “Active member” means any member who renders actual service in a position covered by the system;

(3)(A) “Actual service” means service rendered in a position covered by the system.

(B) “Actual service” does not mean purchased service, service under § 24-10-508, or reciprocal service;

(4) “Actuarial equivalent” means a benefit of equal reserve value, when “reserve” means the present value of all payments to be made on

account of any benefit based upon such reasonable rates of interest and tables of experience as the system shall adopt from time to time;

(5)(A) "Actuary" means a qualified actuary with experience in retirement plan financing.

(B) Membership in the American Academy of Actuaries shall be sufficient for a person to be deemed a qualified actuary;

(6) "Age" means age on last birthday;

(7) "Annuity" means a monthly amount payable throughout the life of a person or for a temporary period;

(8) "Beneficiary" means any person who is receiving or designated by a member to receive a plan benefit, except a retirant;

(9) "Benefit program" means a schedule of benefits or benefit formulas from which the amounts of benefits can be determined;

(10) "Board" means the board of trustees of the system;

(11) "Covered employment" means employment as a police officer or firefighter in a position covered by the system;

(12) "Credited service" means covered employment that is creditable as service by the system and is the total of paid service and volunteer service;

(13)(A) "Dependent child" means a child until his or her death, his or her marriage, or his or her attainment of eighteen (18) years of age, whichever occurs first.

(B)(i) The age-eighteen maximum shall be extended as long as the child continues uninterruptedly being a full-time student at an accredited secondary school, college, or university but in no event beyond the first day of the month after his or her attainment of twenty-three (23) years of age.

(ii) The age-eighteen maximum shall also be extended for any child who has been deemed physically or mentally incompetent by an Arkansas court of competent jurisdiction or by the board for as long as the incompetency exists;

(14) "Effective date" of the system means July 1, 1981;

(15)(A) "Employee" means any person regularly employed by a political subdivision who receives remuneration from the political subdivision for personal services rendered as a police officer or firefighter.

(B) "Employee" shall not include any person who acts for the political subdivision under contract or is paid on a fee basis.

(C) "Employee" shall include any person regularly employed by the administration of the system.

(D) "Employee" shall include a person who is a current active firefighter or police officer member of the Arkansas Local Police and Fire Retirement System and is an instructor at the Arkansas Fire Training Academy or the Arkansas Law Enforcement Training Academy on or after July 1, 2013;

(16) "Employer" means any political subdivision that has its eligible employees covered by the system or the Arkansas Local Police and Fire Retirement System as employer of its administrative staff;

(17)(A) "Final average pay" means the monthly average of the pays to an employee during the period of thirty-six (36) consecutive months of credited service producing the highest monthly average, but the period must be contained within the period of one hundred twenty (120) consecutive months of credited service immediately preceding his or her separation from covered employment.

(B) Should a member have less than thirty-six (36) months of credited service, "final average pay" means the monthly average of pays to the member during the member's total months of credited service.

(C)(i) In any event, pays usable in determining final average pay shall be limited by the test in subdivision (17)(C)(ii) of this section, considering the final average pay period in four (4) consecutive years.

(ii)(a) Pays during any twelve (12) consecutive months shall be usable only to the extent that the pays do not exceed thirty-one percent (31%) of the total pays in the final average pay period.

(b) However, if the final average pay period is less than four (4) full years, the maximum usable thirty-one percent (31%) shall be increased proportionately.

(D)(i) For the limited purposes of calculating final average pay for disability retirement benefits under § 24-10-607, pay shall include workers' compensation benefits received by the member.

(ii) However, the pay that is increased for any month for the limited purposes of calculating this final average pay shall not be greater than the current pay attached to the rank of the member;

(18)(A) "Firefighter" means any regular or permanent employee of a fire department of a political subdivision, including a probationary firefighter.

(B) "Firefighter" does not include any civilian employee of a fire department or any person temporarily employed as a firefighter during an emergency;

(19) "General Assembly" means the General Assembly of the state;

(20)(A) "Inflation index" means the Consumer Price Index for Urban Wage Earners and Clerical Workers, U.S. City Average, as determined by the United States Department of Labor and in effect January 1, 1981.

(B) Should the inflation index be restructured subsequent to 1980 in a manner materially changing its character, the board after receiving the advice of its actuary shall change the application of the inflation index so that, as far as is practicable, the 1980 intent of the use of the inflation index shall be continued;

(21) "Joint Committee on Public Retirement" means the Joint Committee on Public Retirement and Social Security Programs created by §§ 10-3-701 — 10-3-703, or any successor committee;

(22) "Member" means any police officer or firefighter included in the membership of the system or a person regularly employed by the administration of the system;

(23) "Normal retirement age" means the younger of the following ages:

(A) Fifty-five (55) years of age if the member has at least twenty (20) years of credited service;

(B) Sixty (60) years of age if the member has less than twenty (20) years of credited service; or

(C) Any age if the member has twenty-eight (28) or more years of credited service;

(24) "Operative date" of the system means January 1, 1983;

(25) "Paid service" is covered employment that is half-time employment or more and that becomes credited service. For a calendar month in 1981 to become paid service, the police officer or firefighter shall be paid at least five hundred dollars (\$500) for that month's personal services as a police officer or firefighter. For any calendar year after 1981, the monthly minimum of five hundred dollars (\$500) shall be increased by any percentage increase in the inflation index for the period from October 1980 to the October immediately preceding the calendar year;

(26)(A) "Pay" means the recurring remuneration paid an employee for personal services rendered by the employee in a position covered by the system and shall not exceed the amount the employee is required to report for federal income tax purposes.

(B) In determining pay, consideration shall not be given to:

(i) Special single-sum payments paid by an employer;

(ii) Employer contributions to any employee benefit plan; or

(iii) Any other unusual or nonrecurring remuneration.

(C) Annual compensation in excess of the limitations under section 401(a) of the Internal Revenue Code of 1986, as it existed on January 1, 2011, shall be disregarded;

(27)(A) "Police officer" means any regular or permanent employee of a police department of a political subdivision, including a probationary police officer.

(B) "Police officer" does not include any civilian employee of a police department or any person temporarily employed as a police officer during an emergency;

(28) "Political subdivision" means:

(A) An incorporated town;

(B) A city of the first class;

(C) A city of the second class;

(D) A county;

(E) A fire protection district that maintains standards established by the board;

(F) A rural fire protection corporation;

(G) A suburban improvement district;

(H) The Arkansas Fire Training Academy; and

(I) The Arkansas Law Enforcement Training Academy;

(29) "Regular interest" means such reasonable rate or rates per annum, compounded annually, as the board shall adopt;

(30) "Relief fund" means:

(A) Any police officers' pension and relief fund created by state law, applicable to police officers, and covering one (1) or more persons on December 31, 1982; or

(B) Any fire fighters' relief and pension fund created by state law, applicable to firefighters, and covering one (1) or more persons on December 31, 1982;

(31) "Retirant" means a former member receiving a plan annuity by reason of having been a member;

(32) "Social security" means the federal social security old age, survivors, and disability insurance program, as amended;

(33) "State" means the State of Arkansas and includes all of its duly constituted agencies;

(34) "System" means the Arkansas Local Police and Fire Retirement System created by this chapter; and

(35) "Volunteer service" means covered employment that becomes credited service and cannot be classified as paid service.

History. Acts 1981, No. 364, § 2; 1983, No. 645, § 1; 1985, No. 160, § 1; A.S.A. 1947, § 12-3802; Acts 1997, No. 769, § 1; 1999, No. 715, § 1; 1999, No. 863, § 1; 1999, No. 865, § 5; 1999, No. 955, § 1; 2003, No. 507, § 1; 2007, No. 803, § 2; 2011, No. 17, § 1; 2013, No. 40, § 1; 2013, No. 522, §§ 1, 2; 2013, No. 1134, § 2.

Amendments. The 2011 amendment added (1)(B); inserted present (2) and (3) and redesignated the remaining subdivisions accordingly; deleted former (10)(B); substituted "the first day of the month after his or her attainment of twenty-three (23) years of age" for "his or her attainment of age twenty-three (23)" in (13)(B)(i); substituted "(17)(c)(ii)" for "(15)(C)(ii)" in (17)(C)(i); substituted "monthly minimum of five hundred dollars (\$500)" for "five hundred dollars (\$500) monthly minimum of" in (25);

added "and shall not exceed the amount the employee is required to report for federal income tax purposes" in (26)(A); deleted former (26)(B) and redesignated former (26)(C) as present (26)(B); added present (26)(C); deleted former (31) and redesignated the following subdivisions accordingly; and substituted "means" for "is" in (35).

The 2013 amendment by No. 40 substituted "the member during the member's" for "him or her during his or her" in (17)(B); in (17)(C)(i), substituted "(17)(C)(ii)" for "(17)(c)(ii)" and "consecutive years" for "contiguous segments"; and substituted "twelve (12) consecutive months" for "one (1) annual segment" in (17)(C)(ii).

The 2013 amendment by No. 522 added (15)(D), (28)(H) and (28)(I).

The 2013 amendment by No. 1134 made stylistic changes in (28).

CASE NOTES

Cited: *Gonzales v. City of Dewitt*, 357 Ark. 10, 159 S.W.3d 298 (2004).

24-10-104. Correction of errors.

(a) Should any change or error in records result in any person receiving from the Arkansas Local Police and Fire Retirement System more or less than he or she would have been entitled to receive had the records been correct, the Board of Trustees of the Arkansas Local Police and Fire Retirement System shall correct the error and, as far as is practicable, shall adjust the payment of the benefit in such manner that

the actuarial equivalent of the benefit to which the person was correctly entitled shall be paid.

(b) The board may file an action in a court of competent jurisdiction to recover an overpayment a person has received from the funds of the system.

History. Acts 1981, No. 364, § 7; A.S.A. 1947, § 12-3808; Acts 2009, No. 258, § 1. **Amendments.** The 2009 amendment added (b).

24-10-107. Direct deposit of insurance premium tax money in system.

(a) The Arkansas Fire and Police Pension Review Board and the Board of Trustees of the Arkansas Local Police and Fire Retirement System are directed to develop and adopt appropriate rules and procedures to allow insurance premium tax money that is allocated to the Arkansas Local Police and Fire Retirement System to be deposited directly to the system.

(b) The rules and procedures shall be adopted by May 1, 2004.

History. Acts 2003, No. 1737, § 1.

SUBCHAPTER 2 — BOARD OF TRUSTEES

SECTION.

24-10-201. Members and terms.

24-10-204. Employees.

SECTION.

24-10-206. Federal taxation.

Effective Dates. Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2003, No. 1277, § 2: amendment effective by its own terms on Jan. 1, 2004.

Acts 2011, No. 17, § 7: Feb. 9, 2011. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the Arkansas Local Police and Fire Retirement System is in place to provide economic security for eligible citizens of Arkansas, that the statutes need amending to account for changes in the economy, and that these citizens need to be immediately covered by these changes. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2011, No. 556, § 6: Mar. 22, 2011. Emergency clause provided: "It is found and determined by the General Assembly that the Arkansas Fire and Police Pension Review Board is in place to provide economic security for eligible citizens of Arkansas, that the statutes need amending to account for changes in the economy, and that these citizens need to be immediately covered by these changes. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2013, No. 40, § 18: Feb. 6, 2013. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the local police and fire retirement systems provide economic security for eligible citizens of Arkansas; that the statutes need amending to update and clarify existing law; and that these changes need to be made immediately. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

24-10-201. Members and terms.

(a) The general administration and the responsibility for the proper operation of the Arkansas Local Police and Fire Retirement System and for making effective the provisions of this chapter are vested in a board of trustees of seven (7) persons as follows:

(1) One (1) person to be appointed member trustee by the Governor from two (2) lists of persons submitted to him or her, one (1) list from the Arkansas Professional Fire Fighters Association and one (1) list from the Arkansas State Firefighters Association;

(2) One (1) person to be appointed member trustee by the Governor from two (2) lists of persons submitted to him or her, one (1) list from the Arkansas Municipal Police Association and one (1) list from the Arkansas Fraternal Order of Police;

(3) Two (2) persons to be appointed employer trustees by the Governor from a list of persons submitted to him or her by the Arkansas Municipal League;

(4) One (1) person who is not a member, retirant, or beneficiary of the system and who is not a member of the governing body of any political subdivision to be appointed trustee by the Governor from a list of persons submitted to him or her by the Joint Committee on Public Retirement and Social Security Programs;

(5) One (1) person who is a retired municipal police officer to be appointed a member trustee by the Governor from a list of two (2) persons submitted to him or her by the cochairs of the Joint Committee on Public Retirement and Social Security Programs; and

(6) One (1) person who is a retired municipal firefighter to be appointed a member trustee by the Governor from a list of two (2)

persons submitted to him or her by the cochair of the Joint Committee on Public Retirement and Social Security Programs.

(b)(1) The normal term of office for a trustee shall be four (4) years from January 1 next following his or her election or appointment, as the case may be.

(2) Each trustee shall continue to serve as trustee until a successor is appointed and has qualified.

(c) Trustees elected or appointed as member trustees shall be retired or active members of the system, but:

(1) Not more than one (1) member trustee shall be employed or formerly employed by any one (1) employer;

(2) Not more than two (2) member trustees shall be police officers or retired police officers; and

(3) Not more than two (2) member trustees shall be firefighters or retired firefighters.

(d) Trustees appointed as employer trustees shall be elected or appointed officials of employers with management experience and shall not be members of the system, but not more than one (1) employer trustee shall be from any one (1) employer.

(e) Whenever the Governor is to appoint a trustee, the list of persons submitted to him or her shall consist of the names of two (2) persons.

History. Acts 1981, No. 364, § 7; 1985, No. 547, § 1; A.S.A. 1947, § 12-3807; Acts 2003, No. 1277, § 1; 2013, No. 40, § 2.

A.C.R.C. Notes. Acts 2003, No. 1277, § 2 provided: "(a) This act is effective January 1, 2004.

"(b)(1) Under section 1 of this act, the initial new two (2) member trustees to be appointed by Governor from lists submitted by the cochair of the Joint Committee on Public Retirement and Social Security Programs shall be appointed for staggered terms to expire each year over a two-year

period and the terms shall be designated by the Governor.

"(2) After the initial terms, the two (2) member trustees to be appointed by Governor from lists submitted by the cochair of the Joint Committee on Public Retirement and Social Security Programs shall serve terms as the other trustees for four (4) years."

Amendments. The 2013 amendment substituted "Arkansas State Firefighters Association" for "Arkansas Council of Professional Fire Fighters" in (a)(1).

24-10-204. Employees.

(a)(1) The Board of Trustees of the Arkansas Local Police and Fire Retirement System shall employ an executive director, not one of its number, for at least three (3) years, who shall be the executive officer of the board.

(2) Other employees of the board shall be chosen only upon the recommendation of the Executive Director of the Arkansas Local Police and Fire Retirement System.

(b) After the operative date, the board shall appoint an actuary or a firm of actuaries to be a technical advisor to the board on matters regarding the operation of the system on an actuarial basis. The actuary shall perform such duties as are required of him or her under this chapter and as are from time to time required by the board.

(c) The board shall appoint an attorney at law, or firm of attorneys at law, to be the legal advisor of the board and to represent the board in all legal proceedings.

(d) The board shall appoint an investment advisor, as defined in § 24-10-402.

(e)(1) The board shall arrange for annual audits of the records and accounts of the Arkansas Local Police and Fire Retirement System by a certified public accountant or by a firm of certified public accountants.

(2) The Division of Legislative Audit shall examine the audits at least once every three (3) years and report to the Joint Committee on Public Retirement and Social Security Programs, the Legislative Council, the Board of Trustees of the Arkansas Local Police and Fire Retirement System, the Arkansas Fire and Police Pension Review Board, and the Governor.

(f) The executive director shall be:

(1) The Plan Administrator of the Arkansas Local Police and Fire Retirement System;

(2) The appointing authority in the employment of other professional and clerical employees of the system; and

(3) Responsible for the purchase of such equipment and supplies as are required for the proper operation of the system, subject to the approval of the board.

(g)(1) The pay of the persons engaged by the system shall be consistent with the pay plan of the state.

(2) All other expenses of the board necessary for the operation of the system shall be paid at such rates and in such amounts as the board shall approve.

History. Acts 1981, No. 364, § 7; 1983, No. 676, § 1; A.S.A. 1947, § 12-3807; Acts 1989, No. 152, § 1; 2011, No. 17, § 2.

Amendments. The 2011 amendment subdivided and rewrote (f).

24-10-206. Federal taxation.

(a) The Plan Administrator of the Arkansas Local Police and Fire Retirement System shall operate the Arkansas Local Police and Fire Retirement System and interpret § 24-10-101 et seq. consistent with the Internal Revenue Code of 1986, as it existed on January 1, 2011, and applicable United States Department of the Treasury Regulations, as they existed on January 1, 2011, necessary to allow the system to be operated as a “qualified trust” under Section 401(a) of the Internal Revenue Code of 1986, as it existed on January 1, 2011.

(b) Notwithstanding any language to the contrary under this chapter, the Board of Trustees of the Arkansas Local Police and Fire Retirement System may promulgate rules consistent with this section.

(c) Any rule or portion of a rule promulgated under this section that is found by a court of competent jurisdiction to be in conflict with an applicable provision of the Internal Revenue Code of 1986, as it existed on January 1, 2011, shall be promptly corrected.

History. Acts 2011, No. 17, § 3.

SUBCHAPTER 3 — MEMBERSHIP

SECTION.

24-10-301. Generally.

24-10-304. Transfer of municipal police department officers from Arkansas Public Employees' Retirement System.

Effective Dates. Acts 2007, No. 803, § 4: July 1, 2007. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that in order to attract and maintain good quality employees, the State of Arkansas should always have as its goal better benefits for its employees; that the employees of the Arkansas Local Police and Fire Retirement System would be better served by the retirement system for which they work; and that this act is immediately necessary to transfer the retirement benefits of the employees of the Arkansas Local Police and Fire Retirement System from the Arkansas Public Employees Retirement System to the Arkansas Local Police and Fire Retirement System. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2007."

Acts 2013, No. 522, § 5: Mar. 28, 2013. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the local police and fire retirement systems provide economic security for eligible citizens of Arkansas; that the statutes need amending to update and clarify existing law; and that these changes need to be made immediately. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

24-10-301. Generally.

(a) The membership of the Arkansas Local Police and Fire Retirement System shall include the following persons:

(1) If his or her employer had its firefighters covered by a relief fund on the operative date, each person first employed as a firefighter on or after the operative date shall become a member of this system and not be a member of the relief fund;

(2) If his or her employer had its police officers covered by a relief fund on the operative date, each person first employed as a police officer on or after the operative date shall become a member of this system and not be a member of the relief fund;

(3) If his or her employer did not have its firefighters covered by a relief fund on the operative date, all persons employed as firefighters on the date the employer covers firefighters under this subchapter shall

become members of the system as of that date, and each person first employed as a firefighter thereafter shall become a member upon employment;

(4) If his or her employer did not have its police officers covered by a relief fund on the operative date, all persons employed as police officers on the date the employer covers police officers under this subchapter shall become members of the system as of that date, and each person first employed as a police officer thereafter shall become a member upon employment;

(5) The administrative staff of the Arkansas Local Police and Fire Retirement System; and

(6) A current active firefighter or police officer member of the Arkansas Local Police and Fire Retirement System employed as an instructor at the Arkansas Fire Training Academy or the Arkansas Law Enforcement Training Academy on or after July 1, 2013.

(b) In any case of question as to the system membership status of any person, the Board of Trustees of the Arkansas Local Police and Fire Retirement System shall decide the question.

(c) When covering a person first employed in paid service as a firefighter or police officer on or after July 1, 1985, the employer shall require an employment physical examination of the employee, under criteria established by the board.

History. Acts 1981, No. 364, § 3; 1985, No. 118, § 1; A.S.A. 1947, § 12-3803; Acts 1987, No. 357, § 5; 1993, No. 1203, § 1; 1995, No. 642, § 1; 2007, No. 294, § 3; 2007, No. 803, § 3; 2013, No. 522, § 3.

A.C.R.C. Notes. Acts 2007, No. 803, § 1, provided: "Effective July 1, 2007, the retirement assets and accrued time of all

Arkansas Local Police and Fire Retirement System staff hired after January 1, 1999, shall be transferred from the Arkansas Public Employees Retirement System to the Arkansas Local Police and Fire Retirement System."

Amendments. The 2013 amendment added (a)(6).

24-10-302. Coverage by employer.

CASE NOTES

Coverage.

Under subsection (a), as indicated by the use of the word "may," a political subdivision had the discretion to elect to become an employer and to provide coverage under the Arkansas Local Police and Fire Retirement System (LOPFI), §§ 24-10-101 — 24-10-709; however, the trial

court should have considered whether the retirement plan adopted by the city was similar in purpose to LOPFI in order to determine if there was a violation of subsection (c) of this section. *Gonzales v. City of Dewitt*, 357 Ark. 10, 159 S.W.3d 298 (2004).

24-10-304. Transfer of municipal police department officers from Arkansas Public Employees' Retirement System.

(a) Any municipal police department whose employees were covered by the Arkansas Public Employees' Retirement System on July 1, 1997,

is authorized to transfer those employees hired after July 1, 1997, to the Arkansas Local Police and Fire Retirement System by:

(1) Notifying the board of trustees of each of the retirement systems in writing, and accompanied by a resolution of the governing body of the municipality, of the intention to transfer the coverage of the qualifying officers; and

(2) Authorizing the Board of Trustees of the Arkansas Public Employees' Retirement System to transfer any sums of money paid into the Arkansas Public Employees' Retirement System for the benefit of the officers of the particular department to the Arkansas Local Police and Fire Retirement System for those officers transferred.

(b)(1) If any municipal police department elects to transfer retirement benefits under this section, all employees hired after July 1, 1997, must be enrolled in the Arkansas Local Police and Fire Retirement System.

(2) Subdivision (b)(1) of this section shall not apply if the employees hired after July 1, 1997:

(A) Are members of the Arkansas Public Employees' Retirement System at the time of hiring; and

(B) Continue to receive public safety credit from prior and current employment.

History. Acts 2001, No. 1541, § 1; 2007, No. 290, § 1.

SUBCHAPTER 4 — FUNDS — CONTRIBUTIONS — MANAGEMENT OF ASSETS

SECTION.

24-10-404. Members' deposit account — Contributions.

24-10-405. Employer accumulation account — Contributions.

24-10-407. Income-expense account.

SECTION.

24-10-409. Proration of state revenues between political subdivision and its relief fund.

24-10-411. [Repealed.]

Effective Dates. Acts 2003, No. 1797, § 7: Apr. 23, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that premium tax distribution formula is directing state revenues to areas without the need for priority fire and police protection; that police and fire protection services are of extreme importance in the protection of property values and individual lives; that the distribution of premium tax revenues to the areas of the highest need is a top priority; that implementation of a revised distribution formula must be implemented before the normal time for the effectiveness of other laws; and that this act needs to be imme-

diately effective to fulfill that priority. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2007, No. 609, § 4: Mar. 28, 2007. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the current

laws applicable to the local police and fire pension and relief funds regarding retirement funding allocations require revision; and that revisions are necessary to ensure the effective and efficient operation of the system. Therefore, an immediate emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2007, No. 610, § 3: Mar. 28, 2007. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the Arkansas Local Police and Fire Retirement System laws concerning the uniformed contribution rate for volunteer locations and the amount of prior service recognized for new volunteer departments need to be updated to meet the financial objectives of the system; that the sooner these changes are made, the sooner these locations and departments may reap the benefits of this act; and that this act is necessary because time is of the essence so the system may operate efficiently and equitably. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2009, No. 720, § 6: July 1, 2009. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that economic conditions have resulted in the need to increase retirement benefits; that it is sound public policy to increase the retirement benefit multiplier; and that the increase should be funded by an increase in the member’s contribution. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2009.”

Acts 2009, No. 1316, § 3: July 1, 2009. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that members under the Arkansas Local Police and Fire Retirement System are currently paying income tax on the employer’s contribution to their retirement account; that other members of state-supported retirement systems are not required to pay income tax on their employer’s contributions; and that the members of the Arkansas Local Police and Fire Retirement System should receive pre-tax employer contributions. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2009.”

Acts 2011, No. 556, § 6: Mar. 22, 2011. Emergency clause provided: “It is found and determined by the General Assembly that the Arkansas Fire and Police Pension Review Board is in place to provide economic security for eligible citizens of Arkansas, that the statutes need amending to account for changes in the economy, and that these citizens need to be immediately covered by these changes. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2013, No. 40, § 18: Feb. 6, 2013. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the local police and fire retirement systems provide economic security for eligible citizens of Arkansas; that the statutes need amending to update and clarify existing law; and that these changes need to be made immediately. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the

bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2013, No. 1065, § 15, as amended by Acts 2013, No. 1444, § 1: Apr. 11, 2013. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the local police and fire retirement systems provide economic security for eligible citizens of Arkansas; that the statutes need amending to update and clarify existing law; and that these changes need to be made immediately. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2013, No. 1444, § 2: Apr. 22, 2013. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that Act 1065 of 2013 was enacted with an erroneous emergency clause; that the error needs to be rectified as quickly as possible to effect the will of the General Assembly; and that this act is immediately necessary because it will correct and address the error found in the emergency clause of Act 1065 of 2013. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

24-10-404. Members’ deposit account — Contributions.

(a) The members’ deposit account, as created by § 24-10-403, shall be the account in which shall be accumulated the contributions made by members to the Arkansas Local Police and Fire Retirement System and from which shall be made transfers and refunds of members’ contributions as provided in this chapter.

(b)(1) If a member’s covered employment is not also covered by social security, or if his or her covered employment is also covered by social security and his or her political subdivision has elected Benefit Program 2, as provided in § 24-10-602, and if he or she is receiving pays resulting in paid service credit, his or her contributions to the system shall be six percent (6%) of his or her pays.

(2)(A) Beginning July 1, 2009, the contribution for covered members defined in subdivision (b)(1) of this section shall be eight and one-half percent (8.5%) of his or her pay.

(B) Beginning July 1, 2009, the contribution for paid service members not defined in subdivision (b)(1) of this section shall be two and one-half percent (2.5%) of his or her pay.

(3) The contributions shall be made notwithstanding that the minimum salary or wages provided by law for any member shall thereby be changed.

(4) Each member shall be deemed to consent and agree to the deductions made and provided for in this section.

(5) Payment of a member's pay less the deductions shall be a full and complete discharge and acquittance of all claims and demands whatsoever for services rendered by him or her to a political subdivision, except as to benefits provided by this system.

(c)(1) The officers responsible for making up the payrolls for each political subdivision shall cause the contributions provided for in this section to be deducted from the pay of each member in the employ of the political subdivision, on each and every payroll, to the date his or her membership terminates.

(2)(A) When deducted, each of the amounts shall be paid by the political subdivision to the system.

(B) These payments shall be made in such manner and form, and in such frequency, and shall be accompanied by such supporting data, as the Board of Trustees of the Arkansas Local Police and Fire Retirement System shall prescribe from time to time.

(3) When paid to the system, each of the amounts shall be credited to the member's individual account in the members' deposit account.

(d)(1) In addition to the contributions deducted from the pays of a member, as provided in this section, a member shall deposit in the members' deposit account by a single contribution or by an increased rate of contributions, as approved by the board, the amounts he or she may have withdrawn therefrom and not repaid thereto, together with regular interest from the date of withdrawal to the date of repayment.

(2) In no case shall a member be given credit for service rendered before the date he or she withdrew his or her accumulated contributions until he or she returns to the members' deposit account all amounts due the account by him or her.

(e) If an annuity becomes payable from the retirement reserve account to or on behalf of a member, his or her accumulated contributions shall be transferred to the retirement reserve account.

(f)(1) For purposes of deferring federal and state income tax under the Internal Revenue Code of 1986, 26 U.S.C. § 414(h)(2), as adopted by § 26-51-414, the political subdivision that pays the salary of the member shall pick up the member's contributions to the system as required by this section, beginning with contributions made on and after July 1, 2009.

(2)(A) Member contributions paid by the applicable political subdivision shall be paid from the same source of funds used for the payment of salary to the member.

(B) A deduction shall be made from each member's salary, equal to the amount of the member's contribution paid by the employer.

(3) For all other purposes, member contributions paid by the political subdivision shall be considered member contributions.

by No. 720 inserted (b)(2) and redesignated the subsequent subdivisions accordingly. The 2009 amendment by No. 1316 added (f).

24-10-405. Employer accumulation account — Contributions.

(a) The employer accumulation account as created by this section shall be the account into which contributions made by employers for annuities shall be accumulated and from which transfers shall be made as provided in this chapter.

(b) Employer contributions paid to the Arkansas Local Police and Fire Retirement System provided for in this section shall be credited to the employer accumulation fund account of the employer making the contributions.

(c) When an annuity becomes due and payable to or on behalf of a member, there shall be transferred to the retirement reserve account from his or her employer's account in the employer accumulation account the difference between the reserve for the annuity and the accumulated contributions standing to his or her credit in the members' deposit account at the time the annuity first becomes due and payable.

(d) An employer accumulation account shall be maintained to receive and hold employer contributions.

(e) Paid service employer contributions to the system shall be the total of the contribution amounts provided for in subsections (f) and (g) of this section, and the contributions shall be subject to the provisions of subsection (h) of this section.

(f)(1) For paid service employers, the actuary shall annually compute the rate of contributions, expressed as a percent of active member pays, which will cover the benefit costs of paid service employees participating in the system.

(2) The Board of Trustees of the Arkansas Local Police and Fire Retirement System in consultation with the actuary shall establish, based upon their financial assumptions, the actuarial valuation determining the contribution rate.

(3) The board shall certify annually to the governing body of each employer the contribution rate so determined, and each employer shall pay contributions based on that rate to the system during the employer's next fiscal year, which begins six (6) months or more after the date of the board certification.

(4) The payments shall be made in such manner and form, and in such frequency, and shall be accompanied by such supporting data, as the board shall determine.

(5) When received, the payments shall be credited to the employer accumulation account.

(g) Each employer shall provide its share as determined by the board of the administrative expenses of the system and shall pay that amount to the system to be credited to the income-expense account.

(h)(1) Except under subdivision (h)(2) of this section, the paid service employer's total contributions to the system, expressed as a percentage

of active member pays, in any employer fiscal year beginning with the second fiscal year that the political subdivision is an employer shall not exceed its total contributions for the immediately preceding fiscal year, expressed as a percent of active member pays, by more than one percent (1%).

(2) However, an increase in the paid service employer's contributions to the system may exceed the limit of one percent (1%) per year imposed under subdivision (h)(1) of this section if the board certifies to the governing body of each paid service employer that the increase in the paid service employer's contribution rate is the direct result of increased benefit costs mandated by changes in the law made by the General Assembly.

(i)(1) For volunteer service employers, the actuary shall annually compute the rate of contributions that will cover the benefit costs of volunteer service employees participating in the system as determined by policy established by the board.

(2) The actuarial valuation determination of the contribution rate shall be based upon financial assumptions established by the board following consultation with the actuary.

(3) The board shall certify annually to the governing body of each employer the determined contribution rate, and each employer shall pay contributions based on the determined rate to the system during the employer's next fiscal year that begins six (6) months or more from the date of the board certification.

(4) The board shall determine required supporting data and the manner, form, and frequency in which payments shall be made.

(5) The board shall establish necessary additional policies regarding volunteer service employers that are required to meet the financial objective of the system under this subchapter.

(j) Beginning in fiscal year 2012, for each paid service employer the actuary shall annually compute the rate of contributions that will cover the benefit costs of its employees participating in the system as determined by policy established by the board.

History. Acts 1981, No. 364, § 6; A.S.A. 1947, § 12-3806; Acts 2003, No. 1368, § 1; 2007, No. 610, § 1; 2011, No. 979, § 1; 2013, No. 40, § 3.

Amendments. The 2011 amendment added (j).

The 2013 amendment rewrote (a) and (b); deleted "first" preceding "becomes due" in (c); rewrote (d); substituted "Paid service employer" for "Each paid service

employer's" in (e); in (f)(1), substituted "paid service employers" for "each paid service employer" and "paid service" for "its"; rewrote (f)(2); substituted "certify annually" for "annually certify" in (f)(3); deleted "employer's account in the" preceding "employer" in (f)(5); substituted "percentage" for "percent" in (h)(1); and rewrote (i)(1).

24-10-407. Income-expense account.

(a) The income-expense account, as created by this section, shall be the account to which shall be credited all investment income from invested assets of the Arkansas Local Police and Fire Retirement

System, in which shall be accumulated the contributions made by employers for the administrative expenses of the system, from which shall be made annual transfers of regular interest to the other accounts of the system, and from which shall be paid all the expenses of the system necessary for the administration and operation of the system.

(b) When paid to the system, the employer contributions provided for in § 24-10-405(g) shall be credited to the income-expense account.

(c) The Board of Trustees of the Arkansas Local Police and Fire Retirement System may accept gifts and bequests, which shall be credited to the income-expense account, along with all other moneys received by the system the disposition of which is not specifically provided for in this chapter.

(d)(1)(A) At the end of each system fiscal year, the board shall credit each member's individual account in the members' deposit account with regular interest on the average balance in the account for the fiscal year.

(B) Beginning July 1, 2013, the board shall cease awarding interest to each member's deposit account.

(2) At the end of each system fiscal year, the board shall credit to the employer accumulation account regular interest on the average balance in the account for the fiscal year and similarly shall credit regular interest to the retirement reserve account.

(3) The regular interest shall be transferred from the income-expense account.

(e) Whenever the board determines that the balance in the income-expense account is more than sufficient to cover the current charges to the account, the board by resolution may provide for contingency reserves, or for the transfer of the excess, or portions thereof, to cover the needs of the other accounts of the system.

History. Acts 1981, No. 364, § 6; A.S.A. 1947, § 12-3806; Acts 2013, No. 40, § 4; 2013, No. 1065, § 1.

The 2013 amendment by No. 1065 added the (d)(1)(A) designation and added (d)(1)(B).

Amendments. The 2013 amendment by No. 40 deleted "each account in" preceding "the employer" in (d)(2).

24-10-409. Proration of state revenues between political subdivision and its relief fund.

(a) For each political subdivision with a relief fund in effect, the relief fund has been receiving revenues from the state derived from the taxes levied on foreign and domestic insurers by the Arkansas Insurance Code, § 23-60-101 et seq., and §§ 24-11-301, 24-11-303, 24-11-801 — 24-11-807, 24-11-809, 24-11-813 — 24-11-816, 24-11-818 — 24-11-820, 24-11-821 [repealed], 26-57-601 — 26-57-605, and 26-57-607 or any other state funds designated for support of fire and police retirement programs in political subdivisions.

(b)(1)(A) Those state revenues shall be prorated between the relief fund and the political subdivision based upon the total number of

members active and retired and beneficiaries covered by the relief fund and by the Arkansas Local Police and Fire Retirement System.

(B) However, the amount allocated:

(i) To the political subdivision shall not exceed one hundred percent (100%) of the cost as calculated under § 24-11-214(e)(8); and

(ii) To the local pension and relief fund shall not exceed one hundred percent (100%) of the cost as calculated under § 24-11-214(e)(7).

(2) In the case of multiple beneficiaries of a single deceased member, those individuals shall be counted as one (1) for purposes of this section.

(c) If there is a mixture of employees acquiring paid service and employees acquiring volunteer service, one (1) paid service employee shall be equal to five (5) volunteer service employees for prorating purposes.

(d) Each political subdivision without a relief fund in effect July 1, 1981, which subsequently covers its fire or police department under the system shall also receive insurance revenues.

(e)(1) Except as provided in subdivision (e)(2) of this section, all moneys received by the political subdivisions shall be applied to the employer contribution required to support this system.

(2) If there is any money remaining after the subsidy account balance has been exhausted, as calculated by the actuary for the Arkansas Fire and Police Pension Review Board, the governing body of the political subdivision may transfer any or all of the excess moneys to the governing body's police pension and relief fund or fire pension and relief fund, or both, with the prior written approval of the board.

History. Acts 1981, No. 364, § 6; 1985, No. 755, § 1; A.S.A. 1947, § 12-3806; Acts 1989, No. 459, § 1; 1989, No. 587, § 1; 2003, No. 1797, § 4; 2005, No. 248, § 1; 2011, No. 556, § 1.

Amendments. The 2011 amendment added "Except as provided in subdivision (e)(2) of this section" at the beginning of (e)(1); and added (e)(2).

24-10-411. [Repealed.]

Publisher's Notes. This section, concerning transfer of subsidy account funds, was repealed by Acts 2007, No. 609, § 3

and Acts 2007, No. 1056, § 5. The section was derived from Acts 1993, No. 1130, § 2.

SUBCHAPTER 5 — CREDITED SERVICE

SECTION.

24-10-501. Paid and volunteer service.

24-10-502. Military service.

24-10-503. Disability.

24-10-504. Forfeiture and restoration.

24-10-505. Public service with other Arkansas systems.

SECTION.

24-10-506. Other local police and fire service.

24-10-508. Service credit.

24-10-510. Service credit for former military personnel.

Effective Dates. Acts 2003, No. 1473, § 74: July 1, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act includes technical corrects to Act 923 of 2003 which establishes the classification and compensation levels of state employees covered by the provisions of the Uniform Classification and Compensation Act; that Act 923 of 2003 will become effective on July 1, 2003; and that to avoid confusion this act must also be effective on July 1, 2003. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2003."

Acts 2007, No. 610, § 3: Mar. 28, 2007. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the Arkansas Local Police and Fire Retirement System laws concerning the uniformed contribution rate for volunteer locations and the amount of prior service recognized for new volunteer departments need to be updated to meet the financial objectives of the system; that the sooner these changes are made, the sooner these locations and departments may reap the benefits of this act; and that this act is necessary because time is of the essence so the system may operate efficiently and equitably. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2011, No. 17, § 7: Feb. 9, 2011. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the Arkansas Local Police and Fire Retirement System is in place to provide economic security for eligible citizens of Arkansas, that the statutes need amending to account for changes in the economy, and that these citizens need to be immediately covered by these changes. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become

effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2011, No. 91, § 2: Feb. 23, 2011. Emergency clause provided: "It is found and determined by the General Assembly that the Arkansas Local Police and Fire Retirement System is in place to provide economic security for eligible citizens of Arkansas, that the statutes need amending to update provisions concerning service credit for former military personnel, and that these citizens need to be immediately covered by these changes. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2013, No. 40, § 18: Feb. 6, 2013. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the local police and fire retirement systems provide economic security for eligible citizens of Arkansas; that the statutes need amending to update and clarify existing law; and that these changes need to be made immediately. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2013, No. 1065, § 15, as amended by Acts 2013, No. 1444, § 1: Apr. 11, 2013. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the local police and fire retirement systems provide economic security for eligible citizens of

Arkansas; that the statutes need amending to update and clarify existing law; and that these changes need to be made immediately. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2013, No. 1444, § 2: Apr. 22, 2013. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that Act 1065 of

2013 was enacted with an erroneous emergency clause; that the error needs to be rectified as quickly as possible to effect the will of the General Assembly; and that this act is immediately necessary because it will correct and address the error found in the emergency clause of Act 1065 of 2013. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

24-10-501. Paid and volunteer service.

(a)(1) The Board of Trustees of the Arkansas Local Police and Fire Retirement System shall fix and determine by rules the number of years and months of paid service to be credited to each member for his or her employment as an employee.

(2) In no case shall one (1) month of paid service credit be credited for any one (1) calendar month after the operative date for which an employee’s pay is less than the minimum amount specified in this chapter, nor shall more than one (1) year of service be credited to any member for all covered employment rendered by him or her in any one (1) calendar year, unless the service credit is volunteer service credited under the employer as provided for in subsection (b) of this section.

(b)(1) Each employer shall regularly report to the board the calendar months of covered employment by each of its members that the employer wishes to be credited to the member as volunteer service.

(2) The board shall credit the member with the volunteer service.

(3)(A) Beginning January 1, 2010, the board may credit a member both with volunteer service and with paid service when the member earns the service credit simultaneously.

(B) For purposes of subdivision (b)(3)(A) of this section:

(i) A member is limited to earning volunteer service with only one (1) covered employer at a time; and

(ii) A member shall not earn volunteer service if the member is entitled to paid service for the same work.

(c)(1) Not later than one (1) year from and after the date an employer covers its employees and before the retirement of a member included in the employees so covered, the employer shall certify to the board the periods of prior employment of each of its members to be considered for credit as paid service and for credit as volunteer service.

(2) Beginning January 1, 2008, employers shall be limited to recognizing a maximum of four (4) years of prior volunteer service credit.

(3) No prior service shall be certified under this subsection by an employer for any member unless he or she was employed by the employer within the one-year period immediately preceding the date an employer covers its employees and unless he or she is continuously employed by the employer:

(A) From and after that date for one (1) year;

(B) Until his or her death; or

(C) Until his or her total and permanent disability, whichever is earliest.

(4) Beginning January 1, 2012, prior service credit or volunteer service credit shall not be certified under this subsection.

(d) Anything contained herein to the contrary notwithstanding, not later than June 30, 1995, an employer with employees who were not accruing service credit because of the age-related limitation on credited service in subsections (a) and (b) of this section in existence prior to July 28, 1995, and who are or would accrue service credit without such limitations on credited service shall certify to the board the period or periods of previous employment of each such employee to be considered for credited service, and such previous employment shall be considered for credited service, provided the employee pays to the Arkansas Local Police and Fire Retirement System by December 31, 1995, the total member contributions he or she would have contributed to the system had such an age-related limitation not been in effect.

History. Acts 1981, No. 364, § 4; A.S.A. 1947, § 12-3804; Acts 1995, No. 642, § 2; 1999, No. 902, § 1; 2003, No. 479, § 1; 2003, No. 1367, § 1; 2007, No. 610, § 2; 2009, No. 1278, § 1; 2011, No. 979, § 2.

deleted "and regulations" following "by rules" in (a)(1); substituted "the employer" for "another employer" near the end of (a)(2); and rewrote (b)(2) and (b)(3).

The 2011 amendment added (c)(4).

Amendments. The 2009 amendment

24-10-502. Military service.

(a) In the event of a member who while an employee enters the armed forces of the United States during any period of compulsory or voluntary military service, the armed service actually served by him or her shall be credited him or her as service under this subchapter.

(b)(1) In any case of doubt as to the period of armed service to be so credited a member under this section, the Board of Trustees of the Arkansas Local Police and Fire Retirement System shall have final power to determine the period.

(2) Except for service credited under subsection (d) of this section, no person shall be credited with a total of more than five (5) years of armed service.

(c) During the period of armed service and until the member's return as an employee, his or her contributions to the Arkansas Local Police and Fire Retirement System shall be suspended, and any balance

remaining to his or her credit in the system shall be accumulated at regular interest.

(d)(1)(A) Under section 4312 of Pub. L. No. 103-353, the Uniformed Services Employment and Reemployment Rights Act of 1994 in effect October 13, 1996, a member who leaves covered employment to serve in the uniformed services of the United States after giving notice to the employer and who returns to employment shall be treated as not having incurred a break in service with the employer.

(B) The employer shall certify to the system that reemployment was in accordance with section 4312 of Pub. L. No. 103-353.

(2) Under this subsection, the uniformed services of the United States are limited to the armed forces of the United States, the Army and Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty, the commissioned corps of the United States Public Health Service, and any other category of persons designated by the President of the United States in time of war or national emergency.

(3) The cumulative length of the absence from a position of employment with the employer by reason of service in the uniformed services for which service credit will be given shall not exceed five (5) years.

(4) A member whose uniformed service is honorably terminated and who reports for reemployment under this subsection within the time provided in section 4312 of Pub. L. No. 103-353 shall be entitled to accrue benefits for the time the member served in the uniformed services by paying the employee contributions required by § 24-10-404, if any, within the time provided in section 4312 of Pub. L. No. 103-353, and by repaying any amount the member may have previously withdrawn from the system, with interest.

(5)(A) An employer reemploying a member under this subsection shall pay to the system the employer contributions due for the time the member served in the uniformed services as required by § 24-10-405.

(B) However, if a member does not pay the employee contributions due, then no employer contributions are due.

(6) For the purposes of determining the employee and employer contributions due, the member's compensation during the period of service in the uniformed services shall be computed at:

(A) The rate the member would have received if the member had not served in the uniformed services; or

(B) The member's average compensation level during the twelve-month period, or shorter if applicable, immediately preceding the service.

(7) Unless both employee and employer contributions are paid, the member shall not be entitled to any accrued benefits for the time served in the uniformed services.

(8)(A) If a member dies on or after January 1, 2007, while performing Uniformed Services Employment and Reemployment Rights Act of 1994-qualified military service, the member shall be treated as

though he or she resumed covered employment on the day before the day of death.

(B) For a member who had not attained a vested status in the system, sufficient service credit shall accrue to permit the member to become vested.

(C) For a member who had attained a vested status, additional service credit accrual shall not occur.

(D) In all cases, the eligible benefit awarded by the system under this section shall be a nonduty death benefit.

History. Acts 1981, No. 364, § 4; A.S.A. 1947, § 12-3804; Acts 1995, No. 641, § 1; 2003, No. 474, § 1; 2011, No. 17, § 4; 2013, No. 40, § 5.

Amendments. The 2011 amendment added (d)(8).

The 2013 amendment, in (d)(1)(A), deleted “the requirements of” preceding “section 4312” and inserted “Rights”; substi-

tuted “uniformed” for “unformed” in (d)(3); and substituted “Uniformed Services Employment and Reemployment Rights Act of 1994” for “USERRA” in (d)(8)(A).

U.S. Code. The federal Uniformed Services Employment and Reemployment Act of 1994, referred to in (d)(1)(A) is codified as 38 U.S.C. § 4301 et seq.

24-10-503. Disability.

(a) In the event a member in covered employment becomes totally physically or mentally incapacitated for his or her duty as an employee as the natural and proximate result of a personal injury or disease which has arisen out of and in the course of his or her actual performance of duty as an employee, in the event the disability will probably not be permanent, and in the event periodic payments are payable under any workers’ compensation or similar law on account of the same disability, then the disability time shall be credited as service under this subchapter upon proper application filed with the Board of Trustees of the Arkansas Local Police and Fire Retirement System by or on behalf of the member.

(b) All determinations concerning the nature of the disability shall be made by the board.

(c) During the period of disability, his or her contributions based on reportable pays to the Arkansas Local Police and Fire Retirement System shall continue, and any balance remaining to his or her credit in the system shall continue to accrue regular interest.

(d) Service credit granted under this section shall not be considered as credited service for the purpose of determining the member’s final average pay.

(e) Should the member die while so disabled, he or she shall be considered a member in covered employment at the time of death.

History. Acts 1981, No. 364, § 4; A.S.A. 1947, § 12-3804; Acts 2013, No. 40, § 6.

Amendments. The 2013 amendment substituted “proper” for “written” in (a); in (c), added “based on reportable pays”, re-

placed “be suspended” with “continue”, and replaced “be accumulated at” with “continue to accrue”; and substituted “member” for “person” in (e).

24-10-504. Forfeiture and restoration.

(a)(1) When a member is no longer employed by any employer in covered employment, he or she shall cease to be a member of the Arkansas Local Police and Fire Retirement System.

(2) Except as otherwise provided in this chapter, upon termination of his or her membership his or her credited service shall be forfeited by him or her.

(3) If the person becomes reemployed by any employer in covered employment, he or she shall again become a member of the system under subdivision (a)(4) of this section.

(4) Upon his or her reemployment, his or her credited service last forfeited by him or her shall be restored to his or her credit, but only if he or she returns to the system the amount, if any, he or she withdrew from the system, together with regular interest from the date of withdrawal to the date of repayment.

(b)(1) Upon a member's retirement, he or she shall cease to be a member.

(2) Except under subdivision (b)(3) of this section or as otherwise provided in this chapter, he or she shall not again become a member of the system.

(3) Upon a member's retirement for a period of not less than ninety (90) days, the member may return to volunteer service with a covered employer and may continue to draw the retirant's annuity if the retirant desires to return to the covered employer and voluntarily waives further service credit in the system or in any other police or firefighter-related pension fund.

(c)(1) Should a former member entitled to a vested annuity provided for in § 24-10-611 reenter covered employment before becoming a retirant, he or she shall cease to be entitled to a vested annuity and shall become a member, with his or her previous credited service reactivated and to be increased by the reemployment.

(2)(A) If a former member entitled to a vested annuity under § 24-10-611 reenters covered employment after becoming a retirant, the former member may again become a member with previous credited service restored and increased by the period of reemployment, but only if the former member:

(i) Was not a participant in the Local Police and Fire Deferred Retirement Option Plan under § 24-10-701;

(ii) Was a retirant for at least thirty (30) days; and

(iii) Remains reemployed for at least twelve (12) months.

(B) During the time of reemployment, the retirement benefits shall not be paid.

(C) The former member may exercise the reemployment option under this subdivision (c)(2) one (1) time only.

(D)(i) At the end of the period of reemployment, the retirement benefit will be recalculated using service time, including the reemployment service, and final average pay.

(ii) However, the final average pay shall be the same final average pay used initially to calculate the retirement benefit unless the period of reemployment lasts at least thirty-six (36) months, in which case the final average pay will be recalculated as defined under § 24-10-102(17).

(d)(1) Upon the retirement of a member whose credited service results from employment with more than one (1) employer, the amount of his or her annuity shall be based upon his or her total credited service in force at the time of his or her retirement and his or her final average pay during the total credited service.

(2) Each employer shall be responsible financially, within the provisions of this chapter, for the portion of the annuity based upon the service credited the member for employment with the employer, and the benefit program to be applied to each portion of credited service shall be the benefit program the employer had in effect at the time the member left the employment of the employer.

History. Acts 1981, No. 364, § 4; A.S.A. 1947, § 12-3804; Acts 1999, No. 710, § 1; 2003, No. 476, § 1; 2003, No. 1733, § 1; 2013, No. 40, § 7.

Amendments. The 2013 amendment substituted “waives” for “agrees to sign a waiver to earning any” in (b)(3); added

present (c)(2)(A)(i) and redesignated the remaining subdivisions accordingly; redesignated (c)(2)(D)(1) and (c)(2)(D)(2) as (c)(2)(D)(i) and (c)(2)(D)(ii); substituted “§ 24-10-102(17)” for “§ 24-10-102(15)” in (c)(2)(D)(ii); and deleted (e).

24-10-505. Public service with other Arkansas systems.

(a) For the purpose of this section, “related system” means any of four (4) retirement systems:

- (1) The Arkansas Local Police and Fire Retirement System;
- (2) The Arkansas Public Employees’ Retirement System;
- (3) The State Police Retirement System; or
- (4) The Arkansas Teacher Retirement System.

(b) The benefit payable by each related system shall be based upon:

- (1) The service credit with that system;
- (2) The benefit program the related system had in effect at the time the member terminated service covered by the related system; and

(3) The member’s service and pay covered by the related system while the service was being rendered.

(c) During any period that a person is employed in a position covered by a related system, that employee is ineligible to receive a refund of accumulated contributions from any related retirement system in which that employee has service credits and accumulated contributions standing in his or her account. Accumulated contributions may only be refunded when the employee terminates all employment covered by a related system and does not have, in the aggregate, sufficient years of credited service to be eligible for an age and service benefit from any of the related retirement systems.

History. Acts 1987, No. 357, § 4; 1993, 1011, § 1; 1997, No. 1024, § 1; 1999, No. 873, § 1; 1997, No. 485, § 8; 1997, No. 537, § 6; 1999, No. 1070, §§ 1-3.

24-10-506. Other local police and fire service.

(a) An active member of the Arkansas Local Police and Fire Retirement System shall be entitled to purchase credited service in the system equivalent to a period not to exceed fifteen (15) years if the member:

(1)(A) Has at least five (5) years of actual service with the system.

(B) A member hired on or after July 1, 2013, shall accrue ten (10) years of actual service in order to be eligible for purchase under this section;

(2)(A) Had service:

(i) With a local government covered by a municipal police pension and relief fund under § 24-11-401 et seq. or a municipal firemen's pension and relief fund under § 24-11-801 et seq.; or

(ii)(a) As a public safety officer or law enforcement officer in an agency for which the service as a public safety officer or law enforcement officer was not covered by the system.

(b) As used in this section, "service as a public safety officer" includes paid service with a municipality that has police officers or firefighters covered under a policemen's pension and relief fund or a firemen's pension and relief fund where the member performed services as a cadet.

(B) Service that is or will be eligible for benefit payment from another plan shall not be eligible for purchase under the system; and

(3) Contributes to the system an amount that is the actuarial equivalent of the value of the credited service to be purchased. This actuarial equivalent would be as of the time of the purchase of credited service and would be determined by the actuary to the system.

(b) The Board of Trustees of the Arkansas Local Police and Fire Retirement System may make the final determination as to:

(1) The length of purchased service credit;

(2) The amount of regular interest to be charged; and

(3) The manner in which payment will be made to the system.

(c) Service credit purchased under this section may be used to determine the member's total credited service for the amount upon retirement and shall not be used to determine his or her final average pay for service under the system.

History. Acts 1993, No. 1084, § 1; 1997, No. 1352, § 1; 1999, No. 1455, § 1; 2007, No. 1057, § 1; 2011, No. 167, § 1; 2013, No. 1065, § 2.

Amendments. The 2011 amendment inserted "officer" twice in (a)(2)(A)(ii)(a); and added (a)(2)(A)(ii)(b).

The 2013 amendment substituted "An" for "Any" preceding "active" in (a), added the (A) designation in (a)(1); and added (a)(1)(B).

24-10-508. Service credit.

(a) An active member of the Arkansas Local Police and Fire Retirement System who has at least five (5) years of actual service and who has service in an Arkansas law enforcement agency or fire department and who has been employed as a public safety or law enforcement officer in any agency not covered by the system or any other system that is reciprocal to the system shall receive credited service for that service.

(b) A member hired on or after July 1, 2013, shall accrue ten (10) years of actual service in order to be eligible under this section.

History. Acts 1999, No. 716, § 1; 2005, No. 1418, § 1; 2011, No. 17, § 5; 2013, No. 1065, § 3.

Amendments. The 2011 amendment inserted “active” following “Any” and “actual” preceding the first occurrence of “service.”

The 2013 amendment added the (a) designation, and substituted “An” for “Any” preceding “active member” in (a); and added (b).

24-10-510. Service credit for former military personnel.

(a) An active member of the Arkansas Local Police and Fire Retirement System may purchase credited service in the system equivalent to a period not to exceed five (5) years for service rendered by the member while on active duty in the armed forces of the United States before the member’s employment covered by the system, if the member:

- (1) Received an honorable discharge from the armed forces;
- (2)(A) Has at least five (5) years of actual service in the system.

(B) A member hired on or after July 1, 2013, shall accrue ten (10) years of actual service in order to be eligible for purchase under this section; and

(3)(A) Contributes to the system an amount that is the actuarial equivalent of the value of the credited service to be purchased.

(B) The actuarial equivalent is of the time of the purchase of the credited service and shall be determined by the actuary for the system.

(b) The Board of Trustees of the Arkansas Local Police and Fire Retirement System shall make the final determination as to the:

- (1) Length of purchased service credit;
- (2) Amount of regular interest to be charged; and
- (3) Manner in which payment is made to the system.

(c) Service credit purchased under this section shall be used to determine the member’s total credited service under the system but shall not be used to determine his or her final average pay under the system.

History. Acts 1999, No. 883, § 1; 2003, No. 474, § 2; 2003, No. 478, § 1; 2003, No. 1473, § 71; 2009, No. 257, § 1; 2011, No. 91, § 1; 2013, No. 1065, § 4.

A.C.R.C. Notes. Acts 2003, No. 474,

§ 2 erroneously repealed this section. The error was corrected by the reenactment of § 24-10-510, as amended by Acts 2003, No. 478, § 1, by Acts 2003, No. 1473, § 71. Acts 2003, No. 1473, § 72 provided:

"The enactment and adoption of this act shall not repeal, expressly or impliedly, the acts passed at the regular session of the 84th General Assembly. All such acts shall have full effect and, so far as those acts intentionally vary from or conflict with any provision contained in this Act, those acts shall have the effect of subsequent acts and as amending or repealing the appropriate parts of the Arkansas

Code of 1987."

Amendments. The 2009 amendment deleted (2) and redesignated the following subdivision accordingly; and made related and minor stylistic changes.

The 2011 amendment rewrote the section.

The 2013 amendment substituted "An" for "Any" in (a); added the (A) designation in (a)(2); and added (a)(2)(B).

SUBCHAPTER 6 — BENEFITS

SECTION.

- 24-10-602. Annuity generally.
- 24-10-603. Annuity options.
- 24-10-604. Voluntary retirement.
- 24-10-605. Compulsory retirement.
- 24-10-606. Early retirement.
- 24-10-607. Disability retirement.
- 24-10-608. Death of member in paid service.
- 24-10-609. Death of member in volunteer service.

SECTION.

- 24-10-610. Limitations on death and disability annuities.
- 24-10-611. Termination of covered employment.
- 24-10-612. Redetermination of benefits.
- 24-10-613. Disposition of accumulated contributions.
- 24-10-615. Suspension of payments upon request.
- 24-10-620. Limitations on benefits.

Effective Dates. Acts 2003, No. 473, § 6: July 1, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that long term members of the Arkansas Local Police and Fire Retirement System are entitled to the maximum benefits under the system; that increases in annuity options will provide an added level of benefit for vital public safety employees covered under the system; that implementing the benefit option will be administratively most-efficient on July 1, 2003; and that because of this economy of scale and efficiency consideration for the retirement system this act should take effect on July 1, 2003. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health and safety shall become effective on July 1, 2003."

Acts 2003, No. 475, § 2: July 1, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that benefits for the Arkansas Local Police and Fire Retirement System are redetermined on July 1 of each year; that delaying the effective date of this act will result in a one-year loss of benefit increases that compounding

will give to the members; that this one-year loss of increased benefits will impair the financial well being of members; and this act must take effect on the next July 1. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health and safety shall become effective on July 1, 2003."

Acts 2003, No. 481, § 3: July 1, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that certain individuals under the Arkansas Local Police and Fire Retirement System were injured and disabled in the actual performance of duties as an employee before July 1, 2001; that those members did not receive the advantage of the benefit increase of Act 1132 of 2001; that this inequity has worked a financial hardship on individuals who were injured before the benefit was given to those members after July 1, 2001; and that those individuals who were not granted benefits under that law should have benefits restored as soon as possible and to have this act applied retroactively. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public

peace, health and safety shall become effective on July 1, 2003.”

Acts 2003, No. 777, § 2: July 1, 2003. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the benefits for members of the Arkansas Local Police and Fire Retirement System are inadequate; that the benefits should be increased to continue to motivate the emergency service employees of our local governments; that the most beneficial time to increase the benefits is during the beginning of the state fiscal year; and this act is necessary to take effect at that time. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2003.”

Acts 2009, No. 720, § 6: July 1, 2009. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that economic conditions have resulted in the need to increase retirement benefits; that it is sound public policy to increase the retirement benefit multiplier; and that the increase should be funded by an increase in the member’s contribution. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2009.”

Acts 2009, No. 1316, § 3: July 1, 2009. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that members under the Arkansas Local Police and Fire Retirement System are currently paying income tax on the employer’s contribution to their retirement account; that other members of state-supported retirement systems are not required to pay income tax on their employer’s contributions; and that the members of the Arkansas Local Police and Fire Retirement System should receive pre-tax employer contributions. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2009.”

Acts 2011, No. 17, § 7: Feb. 9, 2011. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the Arkansas Local Police and Fire Retirement System

is in place to provide economic security for eligible citizens of Arkansas, that the statutes need amending to account for changes in the economy, and that these citizens need to be immediately covered by these changes. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2013, No. 40, § 18: Feb. 6, 2013. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the local police and fire retirement systems provide economic security for eligible citizens of Arkansas; that the statutes need amending to update and clarify existing law; and that these changes need to be made immediately. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2013, No. 315, § 3: Mar. 11, 2013. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the local police and fire retirement systems provide economic security for eligible citizens of Arkansas; that the statutes need amending to update and clarify existing law; and that these changes need to be made immediately. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the

Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2013, No. 1065, § 15, as amended by Acts 2013, No. 1444, § 1: Apr. 11, 2013. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the local police and fire retirement systems provide economic security for eligible citizens of Arkansas; that the statutes need amending to update and clarify existing law; and that these changes need to be made immediately. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2013, No. 1444, § 2: Apr. 22, 2013. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that Act 1065 of 2013 was enacted with an erroneous emergency clause; that the error needs to be rectified as quickly as possible to effect the will of the General Assembly; and that this act is immediately necessary because it will correct and address the error found in the emergency clause of Act 1065 of 2013. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

24-10-602. Annuity generally.

(a) Upon a member’s retirement, he or she shall receive an annuity for life in accordance with the applicable benefit program elected by his or her employer, as follows:

(1) BENEFIT PROGRAM 1.

(A) For each year of paid service resulting from employment:

(i) In a position not also covered by social security, two and ninety-four hundredths percent (2.94%) of his or her final average pay; and

(ii) In a position also covered by social security, one and ninety-four hundredths percent (1.94%) of his or her final average pay.

(B)(i)(a) In addition, if the member is retiring as provided in § 24-10-604, § 24-10-605, § 24-10-606, or § 24-10-607, and if the member’s age at retirement is less than social security’s minimum age for an immediate unreduced retirement benefit, then the member shall receive a temporary annuity equal to one percent (1%) of his or her final average pay for each year of paid service resulting from employment in a position also covered by social security.

(b) The provisions of this section that allow a member who retires as provided in § 24-10-607, whose employment was also covered by social security, and who is thereby eligible for a temporary annuity shall be applied retroactively to all persons who retired under those circumstances on or after October 1, 1989.

(ii) The temporary annuity shall terminate at the end of the calendar month in which the earlier of the following events occurs:

(a) The member's death; or

(b) His or her attainment of social security's minimum age for an immediate unreduced retirement benefit.

(iii) Any member who has had a temporary annuity terminated because of an award of disability retirement under the Social Security Act shall have that temporary annuity restored;

(2) BENEFIT PROGRAM 2.

(A) For each year of paid service rendered on or after the election date of the Benefit Program 2 and before the election is rescinded:

(i) In a position also covered by social security, two and ninety-four hundredths percent (2.94%) of the member's final average salary; and

(ii) In a position not covered by social security, three and twenty-eight hundredths percent (3.28%) of the member's final average salary.

(B)(i) For each year of paid service rendered before the election date of the Benefit Program 2 or after the election is rescinded:

(a) In a position also covered by social security, one and ninety-four hundredths percent (1.94%) of the member's final average salary; and

(b) In a position not covered by social security, two and ninety-four hundredths percent (2.94%) of the member's final average salary.

(ii) A member who has paid service rendered before the election date of Benefit Program 2 or after the election is rescinded and subsequently readopted may have the paid service rendered on or after July 28, 1995, treated as though the paid service had been rendered after the election date of Benefit Program 2 by paying to the system the actuarial cost of the increased benefit by a single contribution or by an agreement to pay an increased rate of contributions if approved by the board.

(iii) As used in subdivision (a)(2)(B)(ii) of this section, "actuarial cost" means an amount that is the actuarial equivalent of the value of the credited service to be purchased at the time of the purchase, as determined by the system's actuary.

(C)(i)(a) In addition, if the member is retiring as provided in § 24-10-604, § 24-10-605, § 24-10-606, or § 24-10-607, and if the member's age at retirement is less than social security's minimum age for an immediate unreduced retirement benefit, then the member shall receive a temporary annuity equal to one percent (1%) of his or her final average pay for each year of paid service rendered before the election date of Benefit Program 2 and resulting from employment in a position also covered by social security.

(b) The provisions of this section that allow a member who retires as provided in § 24-10-607, whose employment was also covered by social security, and who is thereby eligible for a temporary annuity shall be applied retroactively to all persons who retired under those circumstances on or after October 1, 1989.

(ii) The temporary annuity shall terminate at the end of the calendar month in which the earlier of the following events occurs:

(a) The member's death; or

(b) His or her attainment of social security's minimum age for an immediate unreduced retirement benefit.

(iii) Any member who has had a temporary annuity terminated because of an award of disability retirement under the Social Security Act shall have that temporary annuity restored;

(3) As used in subdivisions (a)(1) and (2) of this section, "social security's minimum age for an immediate unreduced retirement benefit" means one (1) of the following:

(A) If the member is retiring as provided in § 24-10-607 and is in receipt of a disability benefit under the Social Security Act, the age when the social security disability benefit becomes effective;

(B) If the member's retirement is effective before July 1, 2001, as provided in § 24-10-604, § 24-10-605, § 24-10-606, or § 24-10-607, age sixty-two (62); or

(C) If the member's retirement is effective on or after July 1, 2001, as provided in § 24-10-604, § 24-10-605, § 24-10-606, or § 24-10-607, the minimum age for the member's receipt of an immediate unreduced social security old age benefit;

(4) BENEFIT PROGRAM 3.

(A) The total benefit amount computed under subdivisions (a)(1) and (2) of this section shall not exceed at the time of retirement one hundred percent (100%) of the final average pay plus the amounts provided in subdivision (a)(4)(B) of this section for volunteer service;

(B)(i) For retirements effective before July 1, 2003, annuity amounts based upon volunteer service shall be in accordance with system provisions in force before July 1, 2003.

(ii) For retirements effective July 1, 2003, and the twelve (12) calendar months thereafter, the monthly annuity amount for each year of volunteer service shall be five dollars (\$5.00), to a maximum of two hundred dollars (\$200) monthly for all volunteer service.

(iii) For retirements effective in the twelve (12) calendar months beginning July 1 thereafter, the monthly annuity amount for each year of volunteer service shall be five dollars (\$5.00), increased by any percentage increase in the inflation index for the period from December 2003 to the December immediately preceding the July 1, to a maximum for all volunteer service of two hundred dollars (\$200) monthly, similarly increased by any percentage increase in the inflation index; and

(5) BENEFIT PROGRAM 4.

(A) For each year of volunteer service rendered on or after the election of Benefit Program 4 and before the election is rescinded:

(i) The total benefit amount computed under subdivision (a)(2) of this section shall not at the time of retirement exceed one hundred percent (100%) of the final average pay plus the amounts provided in subdivision (a)(5)(B) of this section for volunteer service; and

(ii) For retirements effective July 1, 2013, the monthly annuity amount for each year of volunteer service shall be ten dollars (\$10.00), increased by any percentage increase in the inflation index

for the calendar year preceding July 1, to a maximum of four hundred dollars (\$400) monthly for all volunteer service.

(B) The increased benefit associated with Benefit Program 4 in excess of that defined in Benefit Program 3 shall not be funded through an allocation of premium tax revenues.

(C) The election of Benefit Program 4 may be rescinded only one (1) time by the political subdivision.

(D)(i) A member who has volunteer service rendered before the election date of Benefit Program 4 or after the election is rescinded and subsequently readopted may have the volunteer service rendered on or after July 1, 2013, treated as though the volunteer service had been rendered after the election of Benefit Program 4 by paying to the system the actuarial cost of the increased benefit by a single contribution or by an agreement to pay an increased rate of contributions if approved by the board of trustees.

(ii) As used in this subdivision (a)(5)(D), "actuarial cost" means an amount that is the actuarial equivalent of the value of the credited service to be purchased at the time of the purchase, as determined by the system's actuary.

(b) If each portion of a member's credited service is not covered by the same benefit program, then his or her total annuity for life shall be the total of the annuity for life determined under each applicable benefit program.

(c) Each employer shall have the credited service of each of its members covered by Benefit Program 1 as provided for in this section, unless the employer shall have elected another benefit program provided for in this section.

(d)(1) By majority vote of its governing body, each political subdivision may elect from time to time to cover its members who retire in the future under one (1) of the benefit programs provided for in this section.

(2) The clerk or secretary of the governing body of the political subdivision shall certify, in a manner and form acceptable to the board, the election of the benefit program to the board within ten (10) days of the vote.

(3) The effective date of the political subdivision's benefit program is the first day of the calendar month specified by the governing body, the first day of the calendar month next following receipt by the board of the certification of election of benefit program, or the effective date of the political subdivision's becoming an employer, whichever is the latest date.

(4) The election of Benefit Program 2 may be rescinded only one (1) time by the political subdivision.

(5) If the changed benefit program provides smaller annuities for life than the benefit program previously in effect, then the changed benefit program shall be applicable only to credited service for employment rendered from and after the effective date of the change.

(e) Should an employer change its election of benefit program as provided in this section, the employer contributions shall be corre-

spondingly changed effective the same date as the benefit program change.

(f) The limitation on increases in an employer's contribution provided by § 24-10-405(h) shall not apply to any contribution increase resulting from:

(1) An employer's electing a benefit program that provides larger annuities; and

(2) Increased benefits applicable to retirements on or after July 1, 2001, as provided in subdivisions (a)(1)-(3) of this section.

(g) Increases made to a member's annuity benefits under subsection (a) of this section after August 12, 2005, shall result in a corresponding increase in the employer contributions effective on the same date as the member's annuity benefits increase.

History. Acts 1981, No. 364, § 5; A.S.A. 1947, § 12-3805; Acts 1991, No. 428, § 1; 1995, No. 474, § 1; 1997, No. 1242, §§ 1, 2; 1999, No. 869, § 1; 1999, No. 1453, §§ 1, 2; 2001, No. 1133, § 1; 2001, No. 1536, § 1; 2001, No. 1703, §§ 1, 2; 2003, No. 480, §§ 1-3; 2003, No. 777, § 1; 2003, No. 1367, § 2; 2005, No. 1286, § 1; 2007, No. 294, § 1; 2007, No. 1569, § 1; 2009, No. 720, §§ 2-4; 2013, No. 315, §§ 1, 2.

Amendments. The 2009 amendment made the following substitutions in (a)(1) and (a)(2): substituted "two and ninety-four hundredths percent (2.94%)" for "two and seven-tenths percent (2.7%)" in (a)(1)(A)(i), "one and ninety-four hundredths percent (1.94%)" for "one and seven-tenths percent (1.7%)" in (a)(1)(A)(ii), "two and ninety-four hundredths percent (2.94%)" for "two and six-tenths percent (2.6%)" in (a)(2)(a)(i),

"three and twenty-eight hundredths percent (3.28%)" for "three and one-tenth percent (3.1%)" in (a)(2)(A)(ii), "one and ninety-four hundredths percent (1.94%)" for "one and seven-tenths percent (1.75%)" in (a)(2)(B)(i), and "two and ninety-four hundredths percent (2.94%)" for "two and seven-tenths percent (2.7%)" in (a)(2)(B)(ii); in (a)(4), deleted (a)(4)(B), redesignated the remaining subdivision accordingly, inserted "and (2)," substituted "one hundred percent (100%)" for "eighty-five percent (85%)" and made related changes.

The 2013 amendment redesignated former (a)(4) as (a)(4)(A); added "Benefit Program 3" as the subsection (4) heading; redesignated former (5)(A) and (5)(B) as (a)(4)(B)(i) through (a)(4)(B)(iii); and added (a)(5).

24-10-603. Annuity options.

(a) Before the date the first payment of a member's annuity becomes due, but not thereafter, a member may elect in a manner prescribed by the system to receive his or her annuity as an Option A60 annuity under this section, or the member may elect to have his or her life annuity reduced, excepting any temporary annuity that may be payable. The member may nominate a beneficiary in accordance with the provisions of one (1) of the following options:

(1) OPTION A60 — SIXTY (60) MONTHS CERTAIN AND LIFE ANNUITY.

(A)(i) Under Option A60, the retirant shall be paid an annuity for life with the provision that if the retirant's death occurs before sixty (60) monthly payments have been made, the full annuity shall continue to be paid for the remainder of the sixty (60) months to such persons and in such shares as the retirant shall have designated in a manner prescribed by the system and filed with the Board of Trustees of the Arkansas Local Police and Fire Retirement System.

(ii) If there is no payee surviving, the lump-sum actuarial equivalent of the remaining monthly payments shall be paid to the estate of the last survivor among the retirant and the designated persons.

(B) The reduced annuity shall be ninety-six percent (96%) of the life annuity if the first payment due date is before July 1, 2001, ninety-seven percent (97%) of the life annuity if the first payment due date is on or after July 1, 2001, or one hundred percent (100%) of the life annuity if the first payment due date is on or after July 1, 2003.

(2) **OPTION A120 — ONE HUNDRED TWENTY (120) MONTHS CERTAIN AND LIFE ANNUITY.**

(A)(i) Under Option A120, the retirant shall be paid a reduced annuity for life with the provision that if the retirant's death occurs before one hundred twenty (120) monthly payments have been made, the full reduced annuity shall continue to be paid for the remainder of the one hundred twenty (120) months to such persons and in such shares as the retirant shall have designated in a manner prescribed by the system and filed with the board.

(ii) If there is no payee surviving, the lump-sum actuarial equivalent of the remaining monthly payments shall be paid to the estate of the last survivor among the retirant and the designated persons.

(B) The reduced annuity shall be ninety percent (90%) of the life annuity if the first payment due date is before July 1, 2001, ninety-five percent (95%) of the life annuity if the first payment due date is on or after July 1, 2001, or ninety-eight percent (98%) of the life annuity if the first payment due date is on or after July 1, 2003.

(3) **OPTION B50 — FIFTY PERCENT (50%) SURVIVOR BENEFICIARY ANNUITY.**

(A)(i) Under Option B50, the retirant shall be paid a reduced annuity for life with the provision that upon the retirant's death, one-half ($\frac{1}{2}$) of the reduced annuity shall be continued throughout the future lifetime of and paid to such person the retirant has designated in a manner prescribed by the system and filed with the board before his or her annuity starting date.

(ii) However, the person must be either:

(a) The retirant's spouse for not less than one (1) year immediately preceding the first payment due date;

(b) Another person receiving more than one-half ($\frac{1}{2}$) support from the retirant for not less than one (1) year immediately preceding the first payment due date; or

(c) A dependent child as defined under § 24-10-102(13).

(B) If the first payment due date is before July 1, 2001, the reduced annuity to the retirant shall be eighty-five percent (85%) if the retirant's age and his or her beneficiary's age are the same on the first payment due date, which shall be decreased by one-half of one percent (0.5%) for each year that the beneficiary's age is less than the retirant's age or which shall be increased by one-half of one percent (0.5%) up to a maximum of ninety-five percent (95%) for each year that the beneficiary's age is more than the retirant's age.

(C) If the first payment due date is on or after July 1, 2001, the reduced annuity to the retirant shall be ninety-one percent (91%) if

the retirant's age and his or her beneficiary's age are the same on the first payment due date, which shall be decreased by one-half of one percent (0.5%) for each year that the beneficiary's age is less than the retirant's age or which shall be increased by one-half of one percent (0.5%) up to a maximum of ninety-five percent (95%) for each year that the beneficiary's age is more than the retirant's age.

(D) If the first payment due date is on or after July 1, 2003, the reduced annuity to the retirant shall be ninety-four percent (94%) if the retirant's age and retirant's beneficiary's age are the same on the first payment due date, which shall be decreased by one-half of one percent (0.5%) for each year that the beneficiary's age is less than the retirant's age or which shall be increased by one-half of one percent (0.5%) up to a maximum of ninety-eight percent (98%) for each year that the beneficiary's age is more than the retirant's age.

(4) OPTION B75 — SEVENTY-FIVE PERCENT (75%) SURVIVOR BENEFICIARY ANNUITY.

(A)(i) Under Option B75, the retirant shall be paid a reduced annuity for life with the provision that upon the retirant's death, three-quarters ($\frac{3}{4}$) of the reduced annuity shall be continued throughout the future lifetime of and paid to such person as the retirant shall have designated in a manner prescribed by the system and filed with the board before the retirant's annuity starting date.

(ii) However, the person must be either:

(a) The retirant's spouse for not less than one (1) year immediately preceding the first payment due date;

(b) Another person receiving more than one-half ($\frac{1}{2}$) support from the retirant for not less than one (1) year immediately preceding the first payment due date; or

(c) A dependent child as defined under § 24-10-102(13).

(B) If the first payment due date is before July 1, 2001, the reduced annuity to the retirant shall be eighty percent (80%) if the retirant's age and his or her beneficiary's age are the same on the first due date, which shall be decreased by three-fourths of one percent (0.75%) for each year that the beneficiary's age is less than the retirant's age or which shall be increased by three-fourths of one percent (0.75%) up to a maximum of ninety percent (90%) for each year that the beneficiary's age is more than the retirant's age.

(C) If the first payment due date is on or after July 1, 2001, the reduced annuity to the retirant shall be eighty-six percent (86%) if the retirant's age and his or her beneficiary's age are the same on the first payment due date, which shall be decreased by three-fourths of one percent (0.75%) for each year that the beneficiary's age is less than the retirant's age or which shall be increased by three-fourths of one percent (0.75%) up to a maximum of ninety percent (90%) for each year that the beneficiary's age is more than the retirant's age.

(D) If the first payment due date is on or after July 1, 2003, the reduced annuity to the retirant shall be eighty-nine percent (89%) if the retirant's age and the retirant's beneficiary's age are the same on

the first payment due date, which shall be decreased by three-fourths of one percent (0.75%) for each year that the beneficiary's age is less than the retirant's age or which shall be increased by three-fourths of one percent (0.75%) up to a maximum of ninety-four percent (94%) for each year that the beneficiary's age is more than the retirant's age.

(b)(1)(A) At the election of the retirant, a death of the beneficiary or the divorce or other marriage dissolution after retirement from a spouse designated as beneficiary shall cancel any optional plan elected at retirement to provide continuing lifetime benefits to the beneficiary and shall return the retirant to his or her single lifetime benefit equivalent, to be effective the month following receipt of the retirant's election by the plan.

(B) The election shall be in a manner prescribed by the system.

(2) A retirant who is receiving a single lifetime benefit and who marries after retirement or within the one (1) year immediately preceding retirement may elect to cancel his or her single lifetime benefit and to elect an optional plan providing continuing lifetime benefits to his or her spouse, but only if the election is in a manner approved by the board and is received by the board not earlier than one (1) year after the date of the marriage and not later than eighteen (18) months thereafter.

(3) The election shall be effective the first day of the month following its receipt.

(c) If a member does not elect an option, his or her annuity shall be paid to him or her as an Option A60 annuity provided for under subdivision (a)(1) of this section.

History. Acts 1981, No. 364, § 5; A.S.A. 1947, § 12-3805; Acts 2001, No. 769, § 1; 2003, No. 473, §§ 1-5; 2013, No. 40, § 8.

Amendments. The 2013 amendment substituted "a manner prescribed by the system" for "writing" throughout the section; in (a)(1)(A)(i), substituted "an" for "a reduced" and deleted "reduced" following "the full"; substituted "has" for "shall have" in (a)(3)(A)(i); substituted "§ 24-10-

102(13)" for "§ 24-10-102(11)(B)(ii)" in (a)(3)(A)(ii)(c) and (a)(4)(A)(ii)(c); substituted "one half" for "five-tenth" twice in (a)(3)(D); substituted "three-fourths" for "three quarters" in (a)(4)(B) and (a)(4)(C), and for "seventy-five hundredths" in (a)(4)(D); deleted "written" preceding "election" in (b)(1)(A); added (b)(1)(B); and substituted "in a manner" for "on a form" in (b)(2).

24-10-604. Voluntary retirement.

(a)(1) A member in covered employment may retire with an annuity provided for in § 24-10-602 upon his or her written application to the Board of Trustees of the Arkansas Local Police and Fire Retirement System setting forth at what time, at least thirty (30) days but not more than ninety (90) days subsequent to the execution and filing of his or her application, he or she desires to be retired, but only if, at the time of his or her separation from employment and at the time so specified for his or her retirement, the member shall have attained his or her normal retirement age and have five (5) years of credited service in force.

(2) A member hired on or after July 1, 2013, shall accrue ten (10) years of actual service in order to be eligible under this section.

(b) He or she shall have the right to elect an option provided for in § 24-10-603.

History. Acts 1981, No. 364, § 5; A.S.A. 1947, § 12-3805; Acts 1997, No. 1136, § 1; 2013, No. 1065, § 5.

Amendments. The 2013 amendment added the (1) designation in (a), and sub-

stituted "A" for "Any" preceding "member", "at least" for "not less than" preceding "thirty" and "but not" for "nor" in (a)(1); and added (a)(2).

24-10-605. Compulsory retirement.

(a) A member's employer shall determine the compulsory separation age for its employees.

(b) Upon his or her separation from his or her last covered employment, a member with five (5) or more years of credited service in force who has attained his or her normal retirement age shall receive an annuity provided for in § 24-10-602 and shall have the right to elect an option provided for in § 24-10-603.

(c) A member hired on or after July 1, 2013, shall accrue ten (10) years of actual credited service in order to be eligible under this section.

History. Acts 1981, No. 364, § 5; A.S.A. 1947, § 12-3805; Acts 1997, No. 1136, § 2; 2013, No. 1065, § 6.

Amendments. The 2013 amendment added (c).

24-10-606. Early retirement.

(a) An active member in covered employment who has not attained his or her normal retirement age may retire with an early annuity as provided in this section upon his or her proper application to the Board of Trustees of the Arkansas Local Police and Fire Retirement System setting forth at what time, not less than thirty (30) days nor more than ninety (90) days subsequent to the execution and filing of his or her application, he or she desires to be retired, but only if, at the time of his or her separation from employment and at the time so specified for his or her retirement, the member has:

(1) Attained age fifty (50) and has twenty (20) years of credited service in force; or

(2) Twenty-five (25) years of actual credited paid service in the Arkansas Local Police and Fire Retirement System at any age.

(b) He or she shall have the right to elect an option provided for in § 24-10-603.

(c)(1) Upon early retirement, a member shall receive a certain percent of an annuity for life as provided for in § 24-10-602.

(2) The percent shall be one hundred percent (100%) reduced by one-half of one percent (0.5%) multiplied by the number of months by which his or her age at early retirement is less than his or her normal retirement age.

History. Acts 1981, No. 364, § 5; A.S.A. 1947, § 12-3805; Acts 2009, No. 1317, § 1; 2013, No. 40, § 9.

Amendments. The 2009 amendment inserted the (a)(1) designation; and added (a)(2).

The 2013 amendment, in (a), substituted "An active member" for "Any mem-

ber," "proper application" for "written application," and "the member has" for "the member shall have"; substituted "has" for "have" in (a)(1); inserted "actual" in (a)(2); and inserted "as" in (c)(1).

24-10-607. Disability retirement.

(a)(1)(A)(i) An active member with five (5) years of credited service, including credited service for seventy-five percent (75%) of the two (2) years immediately preceding his or her disability, who while an active member becomes totally and permanently physically or mentally incapacitated for any suitable duty as an employee as a result of a personal injury or disease, may be retired by the Board of Trustees of the Arkansas Local Police and Fire Retirement System upon proper application filed with the board by or on behalf of the member or former member.

(ii) A member hired on or after July 1, 2013, shall accrue ten (10) years of actual service in order to be eligible for retirement.

(B) The employee shall be retired only if, after a medical examination of the member or former member made by or under the direction of a physician or physicians designated by the board, the physician reports to the board in a manner prescribed by the board that the member or former member is physically or mentally totally incapacitated for the further performance of any suitable duty, that the incapacity will probably be permanent, and that the member or former member should be retired.

(2) A proper application to the board by the member or former member or on behalf of the member shall be filed with the board not later than one (1) year after the termination of active membership.

(3) The disability annuity shall be effective the first day of the calendar month next following the later of:

(A) His or her termination of active membership; or

(B) Six (6) months before the date the proper application is filed with the board.

(b)(1)(A) Upon disability retirement as provided in subsection (a) of this section, a member shall receive an annuity provided for in § 24-10-602.

(B)(i) For purposes of calculating the amount of an annuity for disability retirement, a member's final average pay shall include workers' compensation benefits received by the member as set forth under § 24-10-102(17)(D).

(ii) Disability benefits awarded to members before July 16, 2003, shall be adjusted to include workers' compensation benefits in calculating final average pay upon application to the system by the affected member.

(iii) An adjustment shall not be made in monthly benefits paid before January 1, 2003.

(2) The member shall have the right to elect an option provided for in § 24-10-603.

(3) The member's disability retirement and annuity shall be subject to the provisions of subsection (e) of this section and to the provisions of § 24-10-610.

(c)(1)(A) Any active member who while an active member becomes totally and permanently physically or mentally incapacitated for any suitable duty as an employee as the result of a personal injury or disease that the board finds to have arisen out of and in the course of his or her actual performance of duty as an employee may be retired by the board upon proper application filed with the board by or on behalf of the member or former member.

(B) The employee shall be retired only if, after a medical examination of the member or former member made by or under the direction of a physician or physicians designated by the board, the physician reports to the plan in a manner prescribed by the board that the member or former member is physically or mentally totally incapacitated for the further performance of any suitable duty, that the incapacity will probably be permanent, and that the member or former member should be retired.

(2) A proper application to the board by the member or former member or on behalf of the member shall be filed with the board not later than one (1) year after the termination of active membership.

(3) The disability annuity shall be effective the first day of the calendar month next following the later of:

(A) His or her termination of active membership; or

(B) Six (6) months before the date the proper application is filed with the board.

(d)(1)(A) Upon disability retirement as provided in subsection (c) of this section, a member shall receive an annuity provided for in § 24-10-602.

(B) However, for the sole purpose of computing the amount of the annuity for such a retirant who does not have twenty-five (25) years of credited service in force at the beginning of the disability retirement, credited service shall be granted for the period from the date of disability retirement to the date the retirant would have completed twenty-five (25) years of credited service.

(2)(A) Upon disability retirement as provided in subsection (c) of this section for members in paid service, a member shall receive an annuity provided for in § 24-10-602.

(B) However, for determining the amount of the annuity, the retirant's annuity amount shall either be equal to sixty-five percent (65%) of the final average salary of the member or shall be equal to the annuity paid to retirants for each year of paid service resulting from employment as provided for in § 24-10-602, whichever is greater.

(3) The retirant shall have the right to elect an option provided for in § 24-10-603.

(4) The retirant's disability retirement and annuity shall be subject to the provisions of subsection (e) of this section and to the provisions of § 24-10-610.

(e)(1) At least one (1) time each year during the first five (5) years following a member's retirement on account of disability and at least one (1) time in each three-year period thereafter, the board may require any disability retirant who has not attained age fifty-five (55) to undergo a medical examination to be made by or under the direction of a physician or physicians designated by the board.

(2) If the retirant refuses to submit to the medical examination in any period, his or her disability annuity may be suspended by the board until his or her withdrawal of his or her refusal.

(3) If his or her refusal continues for one (1) year, all his or her rights in and to a disability annuity may be revoked by the board.

(4) If, upon the medical examination of the retirant, the physician reports to the board that the retirant is physically and mentally able and capable of resuming suitable duty as an employee, his or her disability retirement shall terminate.

(5) If the former disability retirant does not immediately again become an employee, then, for the purpose of determining his or her eligibility for any other system benefit, he or she shall be considered to have terminated active membership as of the time of disability retirement, but for a reason other than disability or death.

(6)(A) If the former disability retirant immediately again becomes an employee, he or she shall immediately again become a member of the system, and his or her credited service at the time of his or her disability retirement shall be restored to his or her credit.

(B) He or she shall be given service credit for the period he or she was in receipt of the disability annuity.

(C) Should the former disability retirant again become totally and permanently disabled within two (2) years immediately following his or her return to membership, the seventy-five percent (75%) credited service requirement specified in subsection (a) of this section shall be waived.

(f)(1) Beginning July 1, 2003, subdivision (d)(2) of this section shall apply retroactively to allow members of the Arkansas Local Police and Fire Retirement System who received a disability retirement before July 1, 2001, to receive the greater benefit of sixty-five percent (65%) of the final average salary of the member or an amount equal to the annuity paid to retirants for each year of paid service resulting from employment.

(2) However, the system shall not be responsible for making benefit payments retroactive to the effective date of the disability.

History. Acts 1981, No. 364, § 5; A.S.A. §§ 3, 4; 2013, No. 40, § 10; 2013, No. 1947, § 12-3805; Acts 1989, No. 9, §§ 1, 2; 1065, § 7.

1993, No. 1199, § 1; 1995, No. 643, § 1; **Amendments.** The 2013 amendment by No. 40 substituted "proper application" for "written application" and "a manner

2001, No. 1132, § 1; 2003, No. 481, §§ 1, 2; 2003, No. 507, § 2; 2003, No. 1367,

prescribed by the board” for “writing” throughout the section; substituted “An active member” for “Any member” in (a)(1)(A); substituted “§ 24-10-102(17)(D)” for “§ 24-10-102(15)(D)” in (b)(1)(B)(i); substituted “before” for “prior to” in (b)(1)(B)(ii); substituted “An adjustment shall not” for “No adjustment shall”

in (b)(1)(B)(iii); substituted “The member” for “He or she” in (b)(2); and substituted “The member’s” for “His or her” in (b)(3).

The 2013 amendment by No. 1065 added the (i) designation in (a)(1)(A) and added (a)(1)(A)(ii); and substituted “board” for “plan” in (a)(1)(B).

CASE NOTES

Cited: Spriggs v. Ark. Local Police & Fire Ret. Bd., 2010 Ark. App. 197, — S.W.3d — (2010).

24-10-608. Death of member in paid service.

(a)(1) If an active member with five (5) or more years of credited paid service, including credited service for the year immediately preceding his or her death, dies in employer-paid service before retirement, the applicable benefits provided in this subsection and subsections (c)-(e) of this section shall be paid, subject to § 24-10-610.

(2) His or her surviving spouse, who was married to the member at least one (1) year immediately preceding his or her death, shall receive an annuity computed in the same manner in all respects as if the member had:

(A) Retired the date of his or her death with entitlement to an annuity provided for in § 24-10-602;

(B) Elected Option B50 survivor beneficiary annuity provided for in § 24-10-603; and

(C) Nominated the spouse as joint beneficiary.

(3) The spouse annuity shall not be less than twenty percent (20%) of the deceased member’s final average pay at the time of death, or one hundred twenty-five dollars (\$125) monthly, whichever is greater.

(b)(1) If an active member dies in employer-paid service before retirement as a result of a personal injury or disease which the Board of Trustees of the Arkansas Local Police and Fire Retirement System finds to have arisen out of and in the course of his or her actual performance of duty as an employee, the applicable benefits provided in this subsection and subsections (c)-(e) of this section shall be paid, subject to § 24-10-610.

(2) His or her surviving spouse, who was married to the member at least one (1) year immediately preceding his or her death, shall receive an annuity computed in the same manner in all respects as if the member had:

(A) Retired the date of his or her death with entitlement to an annuity provided for in § 24-10-602;

(B) Elected Option B50 survivor beneficiary annuity provided for in § 24-10-603; and

(C) Nominated the spouse as joint beneficiary.

(3) For the sole purpose of computing the amount of the annuity on account of any member who does not have twenty-five (25) years of credited service in force at the time of death, credited service shall be granted for the period from the date of his or her death to the date he or she would have completed twenty-five (25) years of credited service.

(4) The spouse annuity shall not be less than twenty percent (20%) of the deceased member's final average pay at the time of death or one hundred twenty-five dollars (\$125) monthly, whichever is greater.

(c)(1)(A) If a spouse annuity is payable as a result of a member's death while in paid service, his or her dependent children shall each receive an annuity of the greater of ten percent (10%) of the member's final average pay at the time of death or twenty-five dollars (\$25.00) monthly.

(B) However, while there are four (4) or more dependent children, each dependent child shall receive an annuity of an equal share of the greater of thirty percent (30%) of the final average pay or one hundred twenty-five dollars (\$125) monthly.

(2) Upon a child's ceasing to be a dependent child, his or her annuity shall terminate, and there shall be a redetermination of the amounts payable to any remaining dependent children.

(d)(1)(A) If no spouse annuity is payable as a result of a member's death while in paid service, his or her dependent children shall each receive an annuity of the greater of twenty percent (20%) of the member's final average pay at the time of death or twenty-five dollars (\$25.00) monthly.

(B) However, while there are three (3) or more dependent children, each dependent child shall receive an annuity of an equal share of the greater of fifty percent (50%) of the final average pay or one hundred twenty-five dollars (\$125) monthly.

(2) Upon a child's ceasing to be a dependent child, his or her annuity shall terminate, and there shall be a redetermination of the amounts payable to any remaining dependent children.

(e) If, at the time of the member's death while in paid service, there is neither a spouse nor a dependent child, each dependent parent shall receive an annuity of the greater of twenty percent (20%) of the final average pay or fifty dollars (\$50.00) monthly, but only if the plan finds that the parent was dependent upon the member for at least fifty percent (50%) of his or her financial support at the time of death.

(f) Annuities payable under the provisions of this section shall commence the first day of the calendar month next following the date of the member's death or a later date specified for the commencement of annuity payments.

(g) A member hired on or after July 1, 2013, shall accrue ten (10) years of actual credited service in order to be eligible under this section.

History. Acts 1981, No. 364, § 5; 1983, No. 654, § 1; A.S.A. 1947, § 12-3805; Acts 1995, No. 1031, § 1; 2013, No. 1065, § 8.

Amendments. The 2013 amendment added (g).

24-10-609. Death of member in volunteer service.

(a)(1) If an active member who has accrued five (5) or more years of credited service, including credited service for the year immediately preceding his or her death, or who has attained his or her normal retirement age dies in employer volunteer service before retirement, the applicable benefits provided in this subsection and subsection (c) of this section shall be paid, subject to § 24-10-610.

(2) His or her surviving spouse, who was married to the member at least one (1) year immediately preceding his or her death, shall receive an annuity computed in the same manner in all respects as if the member had:

(A) Retired the date of his or her death with entitlement to an annuity provided for in § 24-10-602;

(B) Elected Option B50 survivor beneficiary annuity provided for in § 24-10-603; and

(C) Nominated the spouse as joint beneficiary.

(b)(1) If an active member dies in employer volunteer service before retirement as a result of a personal injury or disease that the Board of Trustees of the Arkansas Local Police and Fire Retirement System finds to have arisen out of and in the course of his or her actual performance of duty as an employee, the applicable benefits provided in this subsection and subsection (c) of this section shall be paid, subject to § 24-10-610.

(2) His or her surviving spouse, who was married to the member at least one (1) year immediately preceding his or her death, shall receive an annuity computed in the same manner in all respects as if the member had:

(A) Retired the date of his or her death with entitlement to an annuity provided for in § 24-10-602;

(B) Elected Option B50 survivor beneficiary annuity provided for in § 24-10-603; and

(C) Nominated the spouse as joint beneficiary.

(3) For the sole purpose of computing the amount of the annuity on account of any member who does not have twenty-five (25) years of credited volunteer service in force at time of death, credited volunteer service shall be granted for the period from the date of his or her death to the date he or she would have completed twenty-five (25) years of credited volunteer service.

(c)(1)(A) Upon a member's death while in volunteer service and in qualifying circumstances provided in subsections (a) and (b) of this section, his or her dependent children shall each receive an annuity of fifteen dollars (\$15.00) monthly.

(B) However, while there are three (3) or more dependent children, each dependent child shall receive an annuity of an equal share of forty dollars (\$40.00) monthly.

(2) Upon a child's ceasing to be a dependent child, his or her annuity shall terminate, and there shall be a redetermination of the amounts payable to any remaining dependent children.

(d) Annuities payable under the provisions of this section shall commence the first day of the calendar month next following the date of the member's death or a later date specified for the commencement of annuity payments.

(e) A member hired on or after July 1, 2013, shall accrue ten (10) years of actual service in order to be eligible for benefits under this section.

History. Acts 1981, No. 364, § 5; 1983, No. 654, § 1; A.S.A. 1947, § 12-3805; Acts 1995, No. 1031, § 2; 2003, No. 477, § 1; 2013, No. 1065, § 9.

Amendments. The 2013 amendment added (e).

24-10-610. Limitations on death and disability annuities.

If a death annuity is payable on behalf of a member who dies in employer service before retirement, or for the portion of a disability annuity payable before a disability retiree's attainment of age fifty-five (55), the total amount of the system annuities based on paid service shall not exceed one hundred percent (100%) of the amount of his or her final average pay at the time of death or disability.

History. Acts 1981, No. 364, § 5; A.S.A. 1947, § 12-3805; Acts 1993, No. 1202, § 1; 1995, No. 643, § 2; 1997, No. 765, § 1; 2013, No. 40, § 11.

Amendments. The 2013 amendment rewrote the section.

24-10-611. Termination of covered employment.

(a) A member who terminates covered employment before attaining his or her normal retirement age, for a reason other than death, early retirement, or disability retirement, shall be entitled to an annuity computed in accordance with the provisions of this section, as it provides at the time of the last termination of covered employment, subject to the member's satisfying all of the following conditions:

(1)(A) The member has five (5) years of credited service.

(B) A member hired on or after July 1, 2013, shall accrue ten (10) years of actual service in order to be eligible for retirement;

(2) The member lives to his or her annuity starting date;

(3) The member makes proper application for retirement and payment of the annuity to the Arkansas Local Police and Fire Retirement System not less than thirty (30) days nor more than ninety (90) days before the date he or she attains his or her normal retirement age; and

(4) The annuity starting date shall be the first day of the calendar month next following the later of:

(A) The date the member attains his or her normal retirement age; and

(B) The date the proper application is received by the system.

(b)(1) The monthly amount of a vested termination annuity shall be computed in the same manner as a normal annuity amount provided for

in § 24-10-602, but based upon his or her credited service and final average pay at the time of termination of covered employment.

(2) If the effective date of the annuity is at least twelve (12) full months after termination, an amount of final average pay usable for the purposes of this section shall be redetermined.

(3) The redetermined amount shall be the amount of final average pay at the time of termination of covered employment increased by one-half ($\frac{1}{2}$) of any percentage increase in the inflation index for the period from three (3) months immediately preceding the termination to three (3) months immediately preceding the annuity effective date.

(4) He or she shall have the right to elect an option provided for in § 24-10-603.

History. Acts 1981, No. 364, § 5; A.S.A. 1947, § 12-3805; Acts 1997, No. 1136, § 3; 1999, No. 1070, § 5; 2007, No. 294, § 2; 2013, No. 40, § 12; 2013, No. 1065, § 10.

Amendments. The 2013 amendment by No. 40 substituted “proper application” for “written application” in (a)(3) and

(a)(4)(B); and substituted “not less than thirty (30) days nor more than ninety (90) day” for “on or after the date that is six (6) months” in (a)(3).

The 2013 amendment by No. 1065 added the (a)(1)(A) designation and added (a)(1)(B).

24-10-612. Redetermination of benefits.

(a) Beginning with the July 1 that is at least twelve (12) full months after the effective date of a monthly benefit, the amount of the benefit shall be redetermined effective each July 1, and the redetermined amount shall be payable for the ensuing year.

(b) The redetermined amount shall be the amount of the benefit as of the immediately preceding July 1 increased by three percent (3%).

(c)(1) Effective July 1, 2009, there will be a one-time redetermination of benefits for paid service members who were receiving a benefit on or before June 30, 2009.

(2) The paid service retirants will receive a benefit beginning July 1, 2009, which is the greater of:

(A) The benefit calculated under § 24-10-602, as in effect on July 1, 2009, using the member’s final average salary at retirement; or

(B) The monthly benefit that otherwise would be paid on July 1, 2009, under this section.

(3) The redetermination under subdivisions (c)(1) and (2) of this section is applicable to all paid service members or their beneficiaries receiving benefits under this subchapter.

(4) The Arkansas Local Police and Fire Retirement System shall not make any benefit payments retroactive to a date before July 1, 2009.

History. Acts 1981, No. 364, § 5; A.S.A. 1947, § 12-3805; Acts 1995, No. 1267, § 1; 1997, No. 289, § 1; 2003, No. 475, § 1; 2009, No. 720, § 5; 2009, No. 1316, § 2.

Amendments. The 2009 amendment by No. 720 added (c).

The 2009 amendment by No. 1316 deleted the (c)(3)(A) designation; deleted “Except as provided in subdivision (c)(3)(B) of this section” in (3); and deleted (c)(3)(B).

24-10-613. Disposition of accumulated contributions.

(a)(1) On or after July 1, 2013, if a retirant and his or her eligible beneficiary, if any, both die before they have received in annuity payments a total amount equal to the accumulated contributions standing to the retirant's credit in the Arkansas Local Police and Fire Retirement System at the time of his or her retirement, the difference between the accumulated contributions and the total amount of annuities received by them shall be paid to the persons the retirant nominated in a manner prescribed by the system and filed with the Board of Trustees of the Arkansas Local Police and Fire Retirement System.

(2) If no designated person survives the retirant and his or her beneficiary, the difference shall be paid to the estates of the survivor of the retirant and his or her beneficiary.

(b) In the event a member ceases to be a member, other than by death, before the date he or she becomes vested to receive an annuity payable by the system, he or she shall be paid the accumulated contributions standing to his or her credit in the members' deposit account upon his or her proper application filed with the board.

(c)(1) In the event a member dies and no annuity becomes or will become payable by the system on account of his or her death, the accumulated contributions standing to his or her credit in the members' deposit account at the time of his or her death shall be paid to the persons he or she nominated in a manner prescribed by the system and filed with the board.

(2) If there are no designated persons surviving the member, the accumulated contributions shall be paid to his or her surviving spouse or to his or her estate, if there is no surviving spouse.

(d)(1) In the event a member's membership in the system terminates and no annuity becomes or will become payable on his or her account, any accumulated contributions standing to his or her credit in the members' deposit account and unclaimed by the member or his or her legal representative within three (3) years from and after the date his or her membership terminated shall be transferred to the income-expense account.

(2) If, thereafter, proper application is made for the accumulated contributions, the board shall pay them from the income-expense account but without interest after the date payment was first due.

History. Acts 1981, No. 364, § 5; A.S.A. 1947, § 12-3805; Acts 1999, No. 1070, § 4; 2013, No. 40, § 13; 2013, No. 1065, § 11.

Amendments. The 2013 amendment by No. 40 substituted "in a manner prescribed by the system" for "by written designation duly executed" in (a)(1) and (c)(1); substituted "estates" for "estate" in

(a)(2); and substituted "the accumulated" for "his or her accumulated" in (c)(1).

The 2013 amendment by No. 1065 added "On or after July 1, 2013" preceding "if a retirant" and deleted ", including any interest credits" preceding "standing to the" in (a)(1).

24-10-615. Suspension of payments upon request.

(a) Notwithstanding any other provision of a plan, a person entitled to receive a plan benefit may request in a manner prescribed by the system, for personal reasons and without disclosure thereof, to suspend for any period the payment of all or any part of the benefit otherwise payable to him or her under this chapter.

(b) Upon receipt of proper notice, the plan shall authorize the suspension, and the person shall be deemed to have forfeited all rights to the amount of benefits so suspended but shall have the right to have the full benefit otherwise payable reinstated as to future monthly payments upon proper notice to the plan to revoke the prior request for a suspension under this section.

History. Acts 1981, No. 364, § 5; A.S.A. 1947, § 12-3805; Acts 2013, No. 40, § 14.

Amendments. The 2013 amendment substituted “in a manner prescribed by

the system” for “the plan in writing” in (a); and in (b), substituted “proper notice” for “the request” near the beginning and for “written notice” near the end.

24-10-620. Limitations on benefits.

(a)(1) Notwithstanding any language to the contrary under this chapter, benefits attributable to employer contributions and paid under the Arkansas Local Police and Fire Retirement System shall not exceed the limitations of Section 415 of the Internal Revenue Code of 1986, as it existed on January 1, 2011, that are applicable to government retirement plans for employees of police and fire departments, including without limitation the dollar limitations in Section 415(b)(1)(A) of the Internal Revenue Code of 1986, as it existed on January 1, 2011.

(2) If the dollar amount referenced in Section 415(b)(1)(A) of the Internal Revenue Code of 1986, as it existed on January 1, 2011, is increased pursuant to regulations issued under that section, the increase shall be effective as of January 1 of the calendar year for which the regulations were effective.

(b) The annual benefits, as may be increased in subsequent years, that are paid to a retirant of the system shall not exceed the limitations under Section 415(b) of the Internal Revenue Code of 1986, as it existed on January 1, 2011, applicable to the annuity effective date under that section.

(c) For purposes of determining compliance with Section 415 of the Internal Revenue Code of 1986, as it existed on January 1, 2011, “compensation” is defined as set forth in United States Department of the Treasury Regulation 1.415-2(d)(2), as it existed on January 1, 2011.

History. Acts 2011, No. 17, § 6.

SUBCHAPTER 7 — LOCAL POLICE AND FIRE DEFERRED RETIREMENT OPTION

PLAN

SECTION.	SECTION.
24-10-701. Election to participate.	24-10-706. Duration.
24-10-702. Credited service.	24-10-707. Death of participant.
24-10-703. Contributions.	24-10-708. Disability of a participant.
24-10-704. Benefits — Rate of return.	24-10-709. Partial-annuity-and-lump-sum option.
24-10-705. Method of payment.	

Effective Dates. Acts 2013, No. 40, § 18: Feb. 6, 2013. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the local police and fire retirement systems provide economic security for eligible citizens of Arkansas; that the statutes need amending to update and clarify existing law; and that these changes need to be made immediately. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2013, No. 1065, § 15, as amended by Acts 2013, No. 1444, § 1: Apr. 11, 2013. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the local police and fire retirement systems provide economic security for eligible citizens of Arkansas; that the statutes need amending to update and clarify existing law; and that these changes need to be made immediately. Therefore, an emergency is declared to exist and this act being immedi-

ately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2013, No. 1444, § 2: Apr. 22, 2013. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that Act 1065 of 2013 was enacted with an erroneous emergency clause; that the error needs to be rectified as quickly as possible to effect the will of the General Assembly; and that this act is immediately necessary because it will correct and address the error found in the emergency clause of Act 1065 of 2013. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

24-10-701. Election to participate.

(a) In lieu of terminating employment and accepting a paid service retirement benefit, a police officer or firefighter who is a member in paid service with the Arkansas Local Police and Fire Retirement System may elect in a manner prescribed by the system to participate in the Local Police and Fire Deferred Retirement Option Plan and defer the

receipt of benefits in accordance with the provisions of this subchapter, provided that the member meets one (1) of the following requirements:

- (1) The member has at least twenty-eight (28) years of service; or
- (2) The member has at least twenty (20) years of service and is at least fifty-five (55) years of age.

(b) The Board of Trustees of the Arkansas Local Police and Fire Retirement System shall approve the participation in the plan.

History. Acts 2003, No. 1734, § 1; inserted "in a manner prescribed by the 2005, No. 871, § 1; 2013, No. 40, § 15. system" in (a).

Amendments. The 2013 amendment

24-10-702. Credited service.

For purposes of this subchapter, "credited service":

- (1) Includes military service credit under § 24-10-502; and
- (2) Shall not include service credit that is volunteer service or other credited service that is purchased under the Arkansas Local Police and Fire Retirement System.

History. Acts 2003, No. 1734, § 1.

24-10-703. Contributions.

(a) If a member begins participation in the Local Police and Fire Deferred Retirement Option Plan, the employer and employee contributions shall continue to be paid.

(b) Employer and employee contributions for employees who participate in the plan shall be credited to the Arkansas Local Police and Fire Retirement System.

(c)(1) For a member who has at least twenty-eight (28) years of service before electing to participate in the plan, seventy-five percent (75%) of the member's monthly retirement benefit that would have been payable had the member elected to cease employment and receive a service retirement shall be paid into the member's plan account.

(2) For a member who has at least twenty (20) years of service but less than twenty-eight (28) years of service and is at least fifty-five (55) years of age before electing to participate in the plan, seventy-two percent (72%) of the member's monthly retirement benefit that would have been payable had the member elected to cease employment and receive a service retirement shall be paid into the member's plan account.

History. Acts 2003, No. 1734, § 1; 2005, No. 871, § 2.

24-10-704. Benefits — Rate of return.

(a) The member's monthly retirement benefit shall not change unless the retirement annuity as defined in § 24-10-602 is increased.

(b)(1) A member who participates in this plan shall be credited interest at a rate of six percent (6%) per annum.

(2) The interest shall be credited to the individual account balance of the member on an annual basis.

(c)(1) When a member has reached year six (6) of participation in the Local Police and Fire Deferred Retirement Option Plan under § 24-10-706, the amount of the benefit calculated at the time of enrollment in the plan shall be redetermined consistent with § 24-10-602.

(2) The redetermined amount shall be the amount of the benefit as of the immediately preceding July 1 increased by three percent (3%).

(3) The redetermined amount shall be payable only when the member elects to cease employment and receive a service retirement and shall not be added to the plan account.

History. Acts 2003, No. 1734, § 1; 2013, No. 1065, § 12. **Amendments.** The 2013 amendment added (c).

24-10-705. Method of payment.

At the option of the participant, the participant in the Local Police and Fire Deferred Retirement Option Plan shall receive:

(1) A lump-sum payment from the account equal to the payments into the plan account;

(2) A monthly annuity that is the actuarial equivalent of the lump-sum amount and paid in the form of one (1) of the options for an annuity under § 24-10-603; or

(3) Another method of payment if another method is approved by the Board of Trustees of the Arkansas Local Police and Fire Retirement System.

History. Acts 2003, No. 1734, § 1.

24-10-706. Duration.

(a) The duration of participation in the Local Police and Fire Deferred Retirement Option Plan for active paid service police officers and firefighters shall not exceed seven (7) years.

(b) At the conclusion of a member's participation in the plan, the member shall terminate employment with the employer and shall start receiving the member's monthly retirement benefit that would have been received if the member had retired at the time the member elected to participate in the plan.

History. Acts 2003, No. 1734, § 1; 2013, No. 1065, § 13. **Amendments.** The 2013 amendment substituted "seven (7)" for "five (5)" in (a).

24-10-707. Death of participant.

(a) If the participant dies during the period of participation in the Local Police and Fire Deferred Retirement Option Plan, a lump-sum

payment equal to the account balance of the participant shall be paid to the participant's survivors or if none, to the participant's estate.

(b) A survivor is entitled to the annuity provided under § 24-10-603 based on the service and final average salary at the time the member elected to participate in the plan.

History. Acts 2003, No. 1734, § 1; substituted "§ 24-10-603" for "§ 24-10-2013, No. 40, § 16. 709" in (b).

Amendments. The 2013 amendment

24-10-708. Disability of a participant.

If the participant becomes disabled during the period of participation in the Local Police and Fire Deferred Retirement Option Plan, the participant shall be treated as any other member who has elected to conclude the other member's participation.

History. Acts 2003, No. 1734, § 1.

24-10-709. Partial-annuity-and-lump-sum option.

(a) If a member does not terminate employment and retire on the date the member meets the service requirements of § 24-10-604 for an unreduced annuity and was not eligible for or has not elected to participate in the Local Police and Fire Deferred Retirement Option Plan as provided in this subchapter, the member may elect, in a manner prescribed by the system, at the time of retirement to participate in the partial-annuity-and-lump-sum option under this section.

(b)(1)(A) At the time of retirement, a member electing to participate shall be eligible to receive a lump-sum distribution in an amount not exceeding one (1) month of benefit for each completed month of service beyond eligibility for an unreduced benefit.

(B) The lump sum shall not exceed an amount equal to sixty (60) months of benefits.

(2) The member electing to participate in the partial-annuity-and-lump-sum option shall then have the member's annuity reduced by an amount that is an actuarially determined equivalent of the withdrawal amount.

(c) The Board of Trustees of the Arkansas Local Police and Fire Retirement System shall adopt rules under this section governing the application for the partial-annuity-and-lump-sum option and the determination of the actuarially equivalent amount of the withdrawal.

History. Acts 2003, No. 1734, § 1; inserted "in a manner prescribed by the system" in (a); and deleted "and regulations" following "adopt rules" in (c).

Amendments. The 2013 amendment

CHAPTER 11

LOCAL POLICE AND FIRE PENSION AND RELIEF FUNDS

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. DISCLOSURE OF FINANCIAL CONDITION — ARKANSAS FIRE AND POLICE PENSION REVIEW BOARD.
3. POLICE PENSION AND RELIEF FUNDS GENERALLY.
4. POLICE PENSION AND RELIEF FUNDS — CITIES OF THE FIRST CLASS.
8. FIREMEN'S RELIEF AND PENSION FUNDS.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

24-11-104. Rules and regulations.

24-11-105. Survivor benefits for spouses who remarry.

A.C.R.C. Notes. References to “this subchapter” in §§ 24-11-101 — 24-11-104 might not apply to § 24-11-105 which was enacted subsequently.

Effective Dates. Acts 2013, No. 41, § 37: Feb. 6, 2013. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the local police and fire retirement systems provide economic security for eligible citizens of Arkansas; that the statutes need amending to update and clarify existing law; and that these

changes need to be made immediately. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

24-11-102. Increase in benefits.

Amendments. The 2013 amendment substituted “an actuarial valuation” for “actuarial evaluation” in (b)(2)(A); substituted “are filed” for “is filed” in (b)(4)(A);

and substituted “Director of the Department of Finance and Administration who” for “Insurance Commissioner, and the commissioner” in (c).

CASE NOTES

Increase in Benefits.

This section authorized a board of trustees of a policemen's pension to increase monthly benefits to current retirees by a fixed dollar amount, and the increases for the current retirees did not violate equal

protection, Ark. Const. Art. 2, § 3, because there was a rational basis for imposing them, a lack of cost of living increases. *Bakalekos v. Furlow*, 2011 Ark. 505, 385 S.W.3d 810 (2011).

24-11-104. Rules and regulations.

The Department of Finance and Administration is authorized to promulgate such reasonable rules and regulations as are necessary to carry out the provisions of §§ 24-11-301 and 24-11-809.

History. Acts 1999, No. 1570, § 6; substituted “§§ 24-11-301 and 24-11-809”
 2013, No. 41, § 2. for “§§ 24-11-301, 24-11-302, 24-11-809,
Amendments. The 2013 amendment and 24-11-810.”

24-11-105. Survivor benefits for spouses who remarry.

The board of trustees of the local fire and police pension funds may elect to continue paying survivor benefits to spouses who remarry after they begin receiving benefits under the plan. However, before the election is effective, the election shall be approved by a majority vote of the governing body of the political subdivision, if any, after the plan meets the requirements for benefit increases under § 24-11-102.

History. Acts 2003, No. 1736, § 1. might not apply to this section which was
A.C.R.C. Notes. References to “this enacted subsequently.
 subchapter” in §§ 24-11-101 — 24-11-104

SUBCHAPTER 2 — DISCLOSURE OF FINANCIAL CONDITION — ARKANSAS FIRE AND POLICE PENSION REVIEW BOARD

SECTION.

- 24-11-203. Arkansas Fire and Police Pension Review Board.
- 24-11-205. Actuarial valuation.
- 24-11-207. Annual financial report.
- 24-11-208. Administration of underfunded plans.
- 24-11-209. [Repealed.]
- 24-11-211. Arkansas Policemen’s Pension Supplement Program.
- 24-11-212. Future supplement funds.
- 24-11-213. Allocation of insurance premium tax — Apportionments.

SECTION.

- 24-11-214. Allocation of insurance premium tax — Division among localities.
- 24-11-215. Allocation of insurance premium tax — Special provisions.
- 24-11-216. Minimum asset management standards.
- 24-11-217. Additional allocation for certain underfunded plans.

Effective Dates. Acts 2003, No. 1373, § 2: Apr. 15, 2003. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the benefits for members of the police and fire pension and relief funds are inadequate; that the benefits are supplemented by the Future Supplement Fund; that those supplemental benefits should be increased to continue to motivate the emergency service employees of our local

governments; and that this act is immediately necessary to continue that motivation. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or

(3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2003, No. 1473, § 74: July 1, 2003. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act includes technical corrects to Act 923 of 2003 which establishes the classification and compensation levels of state employees covered by the provisions of the Uniform Classification and Compensation Act; that Act 923 of 2003 will become effective on July 1, 2003; and that to avoid confusion this act must also effective on July 1, 2003. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2003.”

Acts 2003, No. 1797, § 7: Apr. 23, 2003. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that premium tax distribution formula is directing state revenues to areas without the need for priority fire and police protection; that police and fire protection services are of extreme importance in the protection of property values and individual lives; that the distribution of premium tax revenues to the areas of the highest need is a top priority; that implementation of a revised distribution formula must be implemented before the normal time for the effectiveness of other laws; and that this act needs to be immediately effective to fulfill that priority. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2007, No. 609, § 4: Mar. 28, 2007. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the current laws applicable to the local police and fire pension and relief funds regarding retirement funding allocations require revision; and that revisions are necessary to ensure the effective and efficient operation of the

system. Therefore, an immediate emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2007, No. 849, § 2: Apr. 3, 2007. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that that this act modifies the payment of supplement funds to certain pension funds to provide equitable benefits to the members of those funds; that these funds will be distributed to local police and fire pension and relief funds to be paid to their retired members and beneficiaries; that the payment of these funds will be beneficial to those persons; and that the payments should occur as soon as possible to effectuate the intent of this act. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2011, No. 556, § 6: Mar. 22, 2011. Emergency clause provided: “It is found and determined by the General Assembly that the Arkansas Fire and Police Pension Review Board is in place to provide economic security for eligible citizens of Arkansas, that the statutes need amending to account for changes in the economy, and that these citizens need to be immediately covered by these changes. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by

the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2013, No. 41, § 37: Feb. 6, 2013. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the local police and fire retirement systems provide economic security for eligible citizens of Arkansas; that the statutes need amending to update and clarify existing law; and that these changes need to be made immediately. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2013, No. 500, § 2: Mar. 26, 2013. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the local police and fire retirement systems provide economic security for eligible citizens of Arkansas; that the statutes need amending to update and clarify existing law; and that these changes need to be made im-

mediately. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2013, No. 522, § 5: Mar. 28, 2013. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the local police and fire retirement systems provide economic security for eligible citizens of Arkansas; that the statutes need amending to update and clarify existing law; and that these changes need to be made immediately. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

24-11-203. Arkansas Fire and Police Pension Review Board.

(a) The purpose of this section, which creates and establishes the Arkansas Fire and Police Pension Review Board, is to establish a state pension review board for all municipal fire and police pension funds established under §§ 14-52-106, 24-11-401 — 24-11-403, 24-11-405 — 24-11-413, 24-11-416, 24-11-417, 24-11-422, 24-11-423, 24-11-425, 24-11-428 — 24-11-430, 24-11-801 — 24-11-807, 24-11-809, 24-11-813 — 24-11-815, and 24-11-818 — 24-11-820, 24-11-821 [repealed], which shall oversee all requests for benefit increases and review the annual financial reports and annual actuarial valuations required by this subchapter.

(b)(1) The Arkansas Fire and Police Pension Review Board shall be composed of nine (9) persons as follows:

(A) Two (2) firefighters, an active member, retired member, or a deferred retirement option plan participant, one (1) of whom shall be appointed by the Governor from a list submitted by the Arkansas State Firefighters Association and the other from a list submitted by the Arkansas Professional Fire Fighters Association;

(B) Two (2) police officers, an active member, retired member, or a deferred retirement option plan participant, to be appointed by the Governor, one (1) from a list submitted by the Arkansas Municipal Police Association and the other from a list submitted by the Fraternal Order of Police;

(C) Three (3) persons to be appointed by the Governor from a list submitted by the Arkansas Municipal League;

(D) One (1) person who is not a member, retirant, or beneficiary of the Arkansas Local Police and Fire Retirement System and who is not a current or former member of the governing body of any political subdivision, to be appointed by the Governor from a list of persons submitted to the Governor by the Joint Committee on Public Retirement and Social Security Programs; and

(E) The Director of the Department of Finance and Administration or the director's designee.

(2) The Arkansas Fire and Police Pension Review Board shall elect one (1) of its members as chair.

(c) Members of the Arkansas Fire and Police Pension Review Board who are appointed as employee members must be active members, retired firefighters or police officers, or deferred retirement option plan participants of local firemen's and policemen's pension and relief funds established under §§ 14-52-106, 24-11-401 — 24-11-403, 24-11-405 — 24-11-413, 24-11-416, 24-11-417, 24-11-422, 24-11-423, 24-11-425, 24-11-428 — 24-11-430, 24-11-801 — 24-11-807, 24-11-809, 24-11-813 — 24-11-815, and 24-11-818 — 24-11-820, 24-11-821 [repealed].

(d) Members of the Arkansas Fire and Police Pension Review Board who are appointed as employer members shall be elected or appointed officials of municipalities or fire protection districts with established firemen's or policemen's pension and relief funds. However, employer members shall not be from the same municipality or fire protection district.

(e) Whenever the Governor is to appoint a member of the Arkansas Fire and Police Pension Review Board, the list of persons submitted to the Governor shall consist of the names of at least two (2) persons.

(f)(1) The normal term of office shall be four (4) years from January 1 next following the appointment.

(2) Each member of the Arkansas Fire and Police Pension Review Board shall continue to serve until a successor has been appointed and has qualified.

(g)(1) In the event any employee member of the Arkansas Fire and Police Pension and Review Board ceases to be an active or retired member or a deferred retirement option plan participant of a local pension fund, or any employer member of the Arkansas Fire and Police Pension Review Board ceases to be an appointed or elected official of an employer or becomes a member of a local pension fund, or if the citizen member of the Arkansas Fire and Police Pension Review Board becomes a member of a local pension fund or an elected or appointed official of an employer, or if any board member fails to attend three (3)

consecutive meetings of the board, unless in each case excused for cause by the remaining board members attending the meeting or meetings, the member shall be considered as having resigned from the board, and the board shall declare by resolution the office of that member vacated.

(2) If a vacancy occurs in the office of a member, the vacancy shall be filled for the unexpired term in the same manner as the office was previously filled.

(3) From the time a vacancy in the office of a member occurs and the board has begun the steps to see that the vacancy will be filled and before the time the vacancy is filled, the members in office may elect a person by majority vote to fill temporarily the vacancy for the interim period, but in no event for a period longer than one (1) year.

(h)(1) The executive director and staff of the Arkansas Local Police and Fire Retirement System shall serve as executive director and staff for the Arkansas Fire and Police Pension Review Board.

(2)(A) The Arkansas Fire and Police Pension Review Board or its designated members may meet in executive session with the Board of Trustees of the Arkansas Local Police and Fire Retirement System or its designated members for the purposes stated in and subject to the provisions of § 25-19-106(c) concerning the boards' executive director, staff, or persons being considered for any of those positions.

(B)(i) When applicable, records created by or at the instruction of the Arkansas Fire and Police Pension Review Board concerning the boards' executive director or staff shall be considered personnel records or job evaluation or performance records for purposes of and subject to the provisions of §§ 25-19-105(b)(12) and 25-19-105(c).

(ii) The records in subdivision (h)(2)(B)(i) of this section may be made available to the Arkansas Fire and Police Pension Review Board or its designated members and the boards' executive director.

(i)(1) The board shall be responsible for reviewing and approving at least one (1) time annually all actions taken by the staff in regard to benefit increase requests and administration of the disclosure and reporting requirements under this subchapter.

(2) All benefit increase determinations shall be made in compliance with the provisions of §§ 24-11-101 — 24-11-103.

(j)(1) The board shall have the power to make all rules and regulations necessary to enforce the laws governing funding standards and benefit levels for firemen's relief and pension fund and police pension and relief funds. Further, the board shall have the authority to make all rules and regulations necessary to assure continued tax qualification of each firemen's relief and pension fund and policemen's pension and relief fund that is subject to this subchapter.

(2) All rules and regulations must be promulgated in accordance with the provisions of the Arkansas Administrative Procedure Act, § 25-15-201 et seq. In addition, all rules and regulations relating to continued tax qualification of such plans shall be specifically presented to the Joint Committee on Public Retirement and Social Security Programs or the Legislative Council when the General Assembly is not in session for review prior to final adoption.

(k)(1) Expenses incurred by the board for performing annual actuarial valuations and for all other administrative services to local pension funds shall be paid from the revenues derived from premium taxes levied by the state on insurers for the support of fire and police retirement programs.

(2) The board shall report its administrative and actuarial expenses budgeted for the current year to the Department of Finance and Administration by or on April 30 of each year.

(3) The board shall establish a portion of the insurance tax revenues to use to meet its proper administrative expenses each year, but the board shall not be entitled to more than one percent (1%) of the insurance tax revenues.

(4) Each member of the board may receive expense reimbursement and stipends under § 25-16-901 et seq.

History. Acts 1983, No. 381, §§ 1, 2; 1985, No. 383, § 2; 1985, No. 992, § 2; A.S.A. 1947, §§ 19-5706, 19-5707; Acts 1987, No. 142, § 1; 1995, No. 132, § 1; 1995, No. 1266, § 1; 1997, No. 250, § 234; 1999, No. 543, § 1; 1999, No. 670, § 1; 2001, No. 1542, § 1; 2005, No. 161, § 1; 2007, No. 73, § 1; 2013, No. 41, § 3.

A.C.R.C. Notes. Acts 2013, No. 1443, § 61, provided: “FUNDING TRANSFER — FIRE AND POLICE PENSION. On or before June 15 of each fiscal year, the Arkansas Fire and Police Pension Review Board shall certify to the Chief Fiscal Officer of the State the amount of funding it recommends for disbursement in the ensuing fiscal year to under-funded municipal fire and police relief and pension plans as defined in Arkansas Code 24-11-217. The Chief Fiscal Officer of the State shall then immediately transfer on his books and those of the State Treasurer amounts not to exceed the total amount recommended by the Board or the amount appropriated herein for the ensuing fiscal year, whichever is the lesser amount, from the Revenue Holding Fund Account to the Arkansas Fire and Police Pension Guarantee Fund for distribution to the recommended under-funded plans.

“The provisions of this section shall be

in effect only from July 1, 2013 through June 30, 2014.”

Amendments. The 2013 amendment, in (a), deleted “24-11-810 [repealed]” following “24-11-809,” substituted “financial” for “accountant’s” and “annual” for “biennial,” and deleted “and which shall oversee, invest, and administer the Arkansas Fire and Police Pension Guarantee Fund as established by law” at the end; substituted “Arkansas Fire and Police Pension Review Board” for “board” in (b)(1) and (b)(2); substituted “State Firefighters Association” for “Council of Professional Fire Fighters” in (b)(1)(A); added “or the director’s designee” at the end of (b)(1)(E); substituted “Members of the Arkansas Fire and Police Pension Review Board who are” for “Board members” in (c) and (d); deleted “both” preceding “employer members” in (d); substituted “member of the Arkansas Fire and Police Pension Review Board” for “board member” in (e), (f)(2), and three times in (g)(1); in (j)(1), substituted “firemen’s relief and pension fund” for “fire” in the first sentence, and inserted “relief and pension fund” in the second sentence; substituted “annual” for “biennial” in (k)(1); substituted “the board shall not” for “in no event shall the board” in (k)(3); and substituted “under” for “in accordance with” in (k)(4).

24-11-205. Actuarial valuation.

(a)(1) The Executive Director of the Arkansas Fire and Police Pension Review Board shall cause an actuarial valuation of each plan to be made annually to determine how well the plan is meeting the objectives set forth in § 24-11-204.

(2) The actuarial valuation shall be prepared by an actuary under the supervision of the executive director, who shall establish and implement procedures for securing actuarial services.

(3) Valuations shall be prepared each year or as required by the board for all or certain plans.

(4) The executive director shall submit one (1) copy of the actuarial study to the local pension board and a summary of the findings to the Joint Committee on Public Retirement and Social Security Programs.

(5) Expenses incurred for performing the actuarial valuations shall be paid from the revenues derived from the premium taxes levied on insurers for the support of fire and police retirement programs.

(6) The method and amount of the payment shall be made under § 24-11-203.

(b) The report of each actuarial valuation shall include at least the following:

(1) A summary of the plan benefits evaluated;

(2) The level normal cost of plan benefits, expressed as a percent of active employee payroll or, in the case of volunteer fire department pension plans, expressed in dollar amounts, computed in accordance with generally accepted actuarial funding methods which produce a normal cost rate at least as high as the entry age normal cost funding method;

(3) The accrued liabilities of the plan, which shall be equal to the present value of all future benefits for present plan participants minus the present value of all future normal cost contributions for present plan participants;

(4) The contribution required to amortize unfunded accrued liabilities over a period not to exceed thirty (30) years. Unfunded accrued liabilities shall be equal to the accrued liabilities minus the plan's accrued assets, which are the plan's cash and investments;

(5) The employer contribution required to provide for the normal cost of the plan plus the amount required to amortize the unfunded accrued liability of the plan;

(6) Assumptions of future experiences which are appropriate for the fund in pursuing the general financial objective established by this subchapter. Assumptions shall be made with respect to at least the following:

(A) Investment return;

(B) Pay increase assumptions;

(C) Mortality;

(D) Withdrawal (turnover);

(E) Disability;

(F) Retirement ages; and

(G) Change in active employee group size.

If the pay increase assumption is a constant percentage for all active employee ages, the investment return rate percentage shall not exceed the pay increase percentage by more than two percent (2%) annually, compounded annually, and preferably not by more

than one and one-half percent (1.5%). If the pay increase assumptions are the total of a constant percent plus a changing percentage which decreases as age increases, the investment return rate percentage shall not exceed the constant percent of the pay increase assumptions by more than three percent (3%) annually, compounded annually, and preferably not by more than two percent (2%).

If the entire employee group size is assumed to increase, the increase shall be assumed to occur within the five-year period after the valuation date, and to an eventual active employee group size no more than one hundred fifteen percent (115%) of present size;

(7) Changes in each assumption since the last actuarial valuation shall be noted; and

(8) The actuary shall certify that, in his or her opinion, the assumptions used for the valuation produce results which, in the aggregate, are reasonable.

History. Acts 1979, No. 700, § 3; 1981, No. 286, § 3; 1983, No. 512, § 2; 1985, No. 992, § 1; A.S.A. 1947, § 19-5703; Acts 1989, No. 374, § 1; 2013, No. 41, § 4.

Amendments. The 2013 amendment substituted “annually” for “biennially” in (a)(1); substituted “each year” for “at least

for each odd-numbered year ending December 31” in (a)(3); substituted “shall” for “should” in (a)(5); substituted “made under” for “allowed by” in (a)(6); and substituted “thirty (30)” for “forty (40)” in (b)(4).

24-11-207. Annual financial report.

(a)(1) The board of trustees of each plan shall annually cause a financial report to be prepared covering each plan fiscal year.

(2) The annual financial report shall be prepared at the direction of the board of trustees and in accordance with reporting procedures established by the Arkansas Fire and Police Pension Review Board.

(b) Each annual financial report shall include at least the following:

(1)(A) The plan’s revenues and expenditures during the year.

(B) The revenues shall include at least the annual total for each of the following items:

(i) Employee contributions;

(ii) Employer contributions from the state;

(iii) Employer contributions, other;

(iv) Investment income:

(a) Interest and dividends;

(b) Gain or loss on sales;

(c) Other (specify); and

(d) The total of subdivisions (b)(1)(B)(i)-(iii) of this section;

(v) The change in unrealized gain or loss from the previous year;

(vi) Other (specify); and

(vii) The total of subdivisions (b)(1)(B)(i)-(vi) of this section.

(C) The expenditures shall include at least the annual total for each of the following items:

(i) Refunds of employee contributions;

- (ii) Benefits paid;
- (iii) Administrative expenses;
- (iv) Other (specify); and
- (v) The total of subdivisions (b)(1)(C)(i)-(iv) of this section.

(D) The difference between revenues and expenditures is the change in plan reserve assets for the year; and

(2)(A) The plan reserve assets.

(B) The reserve assets at year's end shall include at least the total for each of the following items:

- (i) Cash and bank checking accounts, noninterest-earning;
- (ii) Bank deposits, interest-earning;
- (iii) Savings and loan deposits, interest-earning;
- (iv) Other cash equivalents, maturing in one (1) year or less;
- (v) United States Government securities;
- (vi) Non-United States Government securities;
- (vii) Mortgages;
- (viii) Corporate bonds;
- (ix) Corporate common and preferred stock;
- (x) Other (specify); and
- (xi) The total of subdivisions (b)(2)(B)(i)-(x) of this section.

(C) For actuarial valuation purposes, the assets will be valued on the method determined by the Arkansas Fire and Police Pension Review Board in consultation with its actuary.

(c) The individual who prepares the annual financial reports and the chair of the board of trustees shall certify that the information contained in the report is an accurate statement of these activities and was prepared in accordance with the provisions of this subchapter and by using the same method of accounting used in previous years.

History. Acts 1979, No. 700, § 4; 1981, No. 286, § 4; 1983, No. 45, § 1; 1983, No. 512, § 3; 1985, No. 898, § 1; A.S.A. 1947, § 19-5704; Acts 1993, No. 999, § 1; 1999, No. 573, § 1; 1999, No. 711, §§ 1-3; 1999, No. 1293, § 1; 2011, No. 556, § 2.

Amendments. The 2011 amendment substituted "a financial" for "an accountant's" in (a)(1); rewrote (a)(2); substituted "annual financial" for "accountant's" in (b); substituted "shall include" for "exhibit shall show" in (b)(1)(B) and (b)(1)(C); in (b)(1)(B)(v), inserted "change in" and deleted "on corporate common or preferred stock, if using the option to include eighty

percent (80%) of year-end market value" at the end; in (b)(2)(B), deleted "exhibit" following "assets" and substituted "include" for "show"; in (b)(2)(C), added "For actuarial valuation purposes" at the beginning and deleted "asset valuation" preceding "method"; deleted (b)(3) and (4); in (c), substituted "individual who prepares the annual financial reports and the chair of the board of trustees" for "accountant," deleted "in his or her opinion" following "certify that," inserted "and was prepared" and added "and by using the same method of accounting used in previous years" at the end.

24-11-208. Administration of underfunded plans.

(a) The purpose of this section is to provide a method for the funding of benefits in certain underfunded plans. Some of the municipal fire and police pension funds established under §§ 14-52-106, 24-11-401 — 24-11-403, 24-11-405 — 24-11-413, 24-11-416, 24-11-417, 24-11-422,

24-11-423, 24-11-425, 24-11-428 — 24-11-430, 24-11-801 — 24-11-807, 24-11-809, 24-11-813 — 24-11-815, and 24-11-818 — 24-11-820, 24-11-821 [repealed], may run out of funds before all of the promised benefits have been paid to their members, retirants, and beneficiaries.

(b)(1) Annually, in conjunction with the actuarial valuations required by § 24-11-205, the Arkansas Fire and Police Pension Review Board shall identify those plans that are projected to deplete their assets within ten (10) years after the valuation date.

(2) A plan so identified shall be declared a projected insolvent fund.

(c) The Arkansas Fire and Police Pension Review Board shall notify the board of trustees of each projected insolvent fund of its funded status and the options that are available to the fund to protect the benefits of its members, retirants, and beneficiaries.

History. Acts 1995, No. 1266, § 2; in (a); and in (b)(1), substituted “Annually” for “Biennially” and “that” for “which.”

Amendments. The 2013 amendment deleted “24-11-810” following “24-11-809”

24-11-209. [Repealed.]

Publisher’s Notes. This section, concerning the Arkansas Fire and Police Pension Guarantee Fund, was repealed by Acts 2013, No. 41, § 6, effective Feb. 6, 2013. The section was derived from Acts 1995, No. 1266, § 3; 2011, No. 979, § 3.

24-11-211. Arkansas Policemen’s Pension Supplement Program.

(a)(1) There is created the Arkansas Policemen’s Pension Supplement Program, to be administered by the Arkansas Fire and Police Pension Review Board.

(2) As used in this section, “retired police officers” includes:

(A) Police officers who are retired from active service; and

(B) Police officers who remain actively employed while participating in the Arkansas Police Officers’ Deferred Retirement Option Plan under a policemen’s pension and relief fund.

(b)(1) The Policemen’s Pension Supplement Program Fund is created to provide a state fund to provide financial assistance to certain retired police officers and their survivors who are receiving pensions from policemen’s pension and relief funds.

(2) The Policemen’s Pension Supplement Program Fund shall be funded by that portion of those unallocated premium taxes levied on insurers for the support of police retirement programs that is transferred to the control of the board under § 24-11-215(c).

(c)(1) The board shall administer the program and make the payments called for under the program, including formulating necessary rules, procedures, and forms.

(2) The board may retain one percent (1%) of the funds transferred for administrative expenses of the program.

(d) Retired police officers and their survivors are eligible for the pension supplement under this program as follows:

(1) A retired police officer or a survivor receiving retirement benefits from a local policemen's pension and relief fund of less than four hundred dollars (\$400) per month shall receive a supplement under the program in an amount equivalent to raise his or her total benefits plus the supplement to four hundred dollars (\$400) per month or the amount in subdivision (d)(2) of this section, whichever is greater; and

(2) A retired police officer or a survivor currently receiving retirement benefits from a local policemen's pension and relief fund of four hundred dollars (\$400) or more per month shall receive a supplement under the program of fifty dollars (\$50.00) per month.

(e) The payment shall be treated for all purposes as a supplement to the retirement benefits received by the person.

(f) On or after July 1 of each fiscal year following the board's payments required by subsection (e) of this section, the board shall pay to the State Treasury the amounts transferred to the board under § 24-11-215(c) that exceed the amounts the board is required to pay under the program.

(g)(1) The program is effective July 1, 1999.

(2) The first payments may be made under the program beginning July 31, 1999, and the first transfer under § 24-11-215(c) shall occur on July 25, 1999, and on each July 25 thereafter.

History. Acts 1999, No. 1452, § 3; 2001, No. 1543, §§ 1, 2; 2003, No. 1473, § 61; 2009, No. 654, § 3; 2013, No. 41, § 7.

A.C.R.C. Notes. As enacted by Acts 1999, No. 1452, § 3, subsection (a) contained an additional subdivision that read as follows: "Local and municipal police officers provide valuable services to the citizens of this state by risking their lives and health to protect the lives and property of our citizens. Upon their retirement or participation in a deferred retirement option plan, these police officers are provided retirement benefits through local police pension funds. These retired police officers and, if deceased, their survivors are expected to pay for all kinds of expenses after their retirement, some which are unexpected and can be extremely ex-

pensive. A program by which the state can provide a modest annual supplement to retirement benefits to defray unexpected expenses for retired police officers and their survivors will benefit all local police officers, local governments, and all citizens of the state."

Amendments. The 2009 amendment subdivided (a)(2), (b), (c), (e), and (g); substituted "under § 24-11-215(c)" for "pursuant to § 24-11-302(f)(4) [repealed]" in (b)(2) and (g)(2); rewrote (f); and made related and minor stylistic changes.

The 2013 amendment substituted "Policemen's Pension Supplement Program Fund" for "fund" in (b)(2); substituted "may" for "shall" in (c)(2); and deleted (e)(1)(A) through (e)(2)(A) and redesignated (e)(2)(B) as (e).

24-11-212. Future supplement funds.

(a) A Future Supplement Fund-Police and a Future Supplement Fund-Fire are created for the purpose of providing cost of living assistance and minimum benefit amount assistance to police and fire pension and relief funds.

(b) The future supplement funds shall be administered by the Arkansas Fire and Police Pension Review Board.

(c) Each year the future supplement funds will receive moneys from:

(1) The portion of each location's premium tax allocation based on number of members as of December 31, 2000, who are no longer receiving benefits and these amounts as defined in § 24-11-214(g); and

(2) The portion of the increase in the amount allocated to general revenues under § 24-11-213 as this amount is defined in that section.

(d)(1) In each regular session, the General Assembly shall decide the method and amount to be distributed from the future supplement funds.

(2)(A) Beginning June 30, 2003, and June 30 of each following year, the future supplement funds are authorized to distribute one hundred percent (100%) of the amount added to the future supplement funds the previous June 30 and any current reserve funds.

(B) The amount shall be distributed to the local police and fire pension and relief funds to be paid to members who are retired, beneficiaries, or members on the deferred retirement option plan.

(C) For the purposes of distribution, a volunteer member shall receive an amount equal to one-fifth ($\frac{1}{5}$) of the amount distributed to a paid member.

(D) The distribution shall be calculated and approved by the board.

(e) At the time that there are no longer any members covered by local police and fire pension and relief funds, any remainder of the future supplement funds shall be transferred to the Arkansas Local Police and Fire Retirement System.

History. Acts 2001, No. 1543, § 3; § 112; 2007, No. 73, § 2; 2007, No. 849, 2003, No. 1373, § 1; 2005, No. 1962, § 1.

24-11-213. Allocation of insurance premium tax — Apportionments.

(a)(1)(A) The premium taxes collected under § 24-11-301 shall be placed in a fund combined with the premium taxes collected pursuant to § 24-11-809.

(B) The combined fund shall be entitled the "Firemen's and Police Officers' Pension and Relief Fund".

(C) The Firemen's and Police Officers' Pension and Relief Fund shall consist of a "fire portion" and a "police portion".

(2) The remaining revenues collected under §§ 23-60-102, 24-11-301, 24-11-809, 26-57-601 — 26-57-605, and 26-57-607 shall be distributed to the Firemen's and Police Officers' Pension and Relief Fund and to the State of Arkansas as general revenues.

(3) Revenues distributed to the State of Arkansas as general revenues are subject to the allocations under § 24-11-215.

(b) The revenues shall be distributed in a manner that the Firemen's and Police Officers' Pension and Relief Fund and the General Revenue Fund will each receive distributions of no less than they received in fiscal year 1999, except that:

(1) If the revenues to be distributed in a subsequent year are less than the revenues distributed in 1999, the distributions to each shall be reduced proportionately;

(2) If additional fire departments become eligible for distributions from the Firemen's and Police Officers' Pension and Relief Fund, the base amount for the state shall be reduced in proportion to the population in the area served by the fire department to the portion of the population of the state not covered by a fire department receiving a distribution from the Firemen's and Police Officers' Pension and Relief Fund; and

(3) If additional police departments become eligible for distributions from the Firemen's and Police Officers' Pension and Relief Fund, the base amount for the state shall be reduced in proportion to the population in the area served by the police department to the portion of the population of the state not covered by a police department receiving a distribution from the Firemen's and Police Officers' Pension and Relief Fund.

(c)(1) Except as provided under subsection (b) of this section, the portion distributed to the Firemen's and Police Officers' Pension and Relief Fund shall be based on the ratio percentage of the total population of the cities, towns, or fire protection districts qualified to participate in the Firemen's and Police Officers' Pension and Relief Fund in comparison to the total population of the State of Arkansas.

(2) The remaining percentage shall be distributed to the General Revenue Fund Account of the State Apportionment Fund.

(3)(A) Beginning with the allocation in fiscal year 2012, the portion distributed shall be at least the portion distributed under subdivision (c)(1) of this section.

(B) The portion distributed under this section shall be:

(i) Forty percent (40%) of the total actuarial cost for groups covered by the Arkansas Local Police and Fire Retirement System; plus

(ii) One hundred percent (100%) of the volunteer costs for these groups less the required employer contribution; plus

(iii) Thirty percent (30%) of the consolidation and local pension and relief fund actuarial costs as defined under § 24-11-214.

(C) The portion distributed is subject to the limits under § 24-11-215.

(d) The allocation of funds between the Firemen's and Police Officers' Pension and Relief Fund and the General Revenue Fund under this section shall be subject to the following conditions:

(1) Each calendar year the Arkansas Fire and Police Pension Review Board shall review its previous calendar year distribution of funds to each qualified city, town, or fire protection district prior to disbursement to each of these qualified areas in compliance with § 24-11-214(h);

(2) The certification of any new city, town, or fire protection district to participate in the Firemen's and Police Officers' Pension and Relief Fund shall be considered in the board's assessment each calendar year of the allocation of the disbursement of the funds under § 24-11-214(h);

(3)(A) Any change in the legal description of any city, town, or fire protection district will be considered in the board's assessment each year.

(B) Any changes shall be reported to the board by December 15 of each calendar year.

(C) The associated population change caused by the change in legal description shall also be considered;

(4) The total population of the cities, towns, or fire protection districts qualified to participate in the Firemen's and Police Officers' Pension and Relief Fund will be determined by a census population assessment in the city, town, or fire protection district;

(5)(A) The legal description of the metes and bounds of the city, town, or fire protection district shall be based on standard physical features of the area.

(B) If the legal description cannot be based on standard physical features, a Global Positioning System survey shall be conducted to determine the boundaries;

(6)(A) The preferred description of the area will be based on standard physical features.

(B) Each local department shall change the department's description of metes and bounds to the standard physical features' description.

(C) In the case of a fire department, if the local chief cannot agree on a standard physical features' description, the county quorum court will make the decision;

(7) The mayor or other qualified representative of each city or town or the county fire coordinator for a rural fire protection district shall certify to the board the accuracy of the metes and bounds legal description of the area;

(8) The metes and bounds legal description shall be determined by a surveyor licensed in the State of Arkansas, by a preexisting map held by the city, town, or fire protection district, or by the Institute for Economic Advancement at the College of Business Administration at the University of Arkansas at Little Rock's Geographic Information Systems Lab;

(9) The population of the area shall be determined by the Census State Data Center at the Institute for Economic Advancement at the College of Business Administration at the University of Arkansas at Little Rock's Geographic Information Systems Lab; and

(10) The amount of revenues allocated to the Firemen's and Police Officers' Pension and Relief Fund shall be kept separate for the fire portion and the police portion.

History. Acts 2003, No. 1797, § 1; 2011, No. 979, § 4; 2013, No. 1134, § 3.

Amendments. The 2011 amendment added (c)(3).

The 2013 amendment inserted "Account of the State Apportionment Fund" at the end of (c)(2).

24-11-214. Allocation of insurance premium tax — Division among localities.

(a) An actuary certified by the Society of Actuaries shall evaluate the information submitted under §§ 24-11-213 — 24-11-215 to determine the amount of the premium tax revenues to be directed to each city, town, or fire protection district.

(b)(1) It is the intent of the General Assembly that the allocation of revenues to the Firemen's and Police Officers' Pension and Relief Fund be directed to a city, town, or fire protection district based on the actuarial cost of their retirement programs.

(2) The actuarial cost for a calendar year:

(A)(i) For a group that is a member of the Arkansas Local Police and Fire Retirement System, shall equal that group's calculated contribution rate, as defined in § 24-10-405, as of the beginning of that calendar year multiplied by that group's estimated annual payroll as of the beginning of that calendar year.

(ii) The group's actuarial cost under this section shall be reduced by the group's estimated annual payroll as of the beginning of that calendar year multiplied by one percent (1%) for the 2008 allocation, two percent (2%) for the 2009 allocation, and three percent (3%) for allocations after 2009.

(iii) However, for volunteer members the actuarial cost shall equal the group's per person cost, less the mandatory employer per person cost, as of the beginning of that calendar year multiplied by the number of volunteer members in that group as of the beginning of that calendar year.

(iv) The additional cost for a group that is a member of the Arkansas Local Police and Fire Retirement System that results from a consolidation of a local pension and relief fund shall be calculated separately for this allocation purpose;

(B) For a group that is covered by a local pension and relief fund, shall be the cost calculated by the actuary for the Arkansas Fire and Police Pension Review Board for the preceding calendar year;

(C) Shall include the cost of any benefit enhancements mandated by state law but shall not include any benefit enhancement that is the result of local options or increases after January 1, 2003;

(D) Shall not include the cost of any benefit enhancements, either mandated by state law or as a result of local options, enacted after January 1, 2007; and

(E)(i) Beginning with the allocation in fiscal year 2012, all actuarial costs in this subsection shall be calculated on the base benefit.

(ii) The base benefit is the minimum amount prescribed under § 24-10-101 et seq. and § 24-11-101 et seq., excluding all elective benefit increases.

(c) The amount of revenues to be directed to cities, towns, and fire protection districts shall equal the amount in the Firemen's and Police Officers' Pension and Relief Fund, less:

(1) The payment for the administrative and actuarial expenses of the board under subsection (k) of this section and under § 24-11-203(k)(3); and

(2) The amount described in subsection (g) of this section.

(d)(1) In general, the revenues shall be allocated in each calendar year to each city, town, or fire protection district so that each city, town, or fire protection district receives the same percentage of its total cost as it received in 2002 but not more than one hundred percent (100%) of its cost.

(2) Any remaining revenues are to be allocated to those receiving less than one hundred percent (100%) of their cost.

(e) This allocation shall keep the fire portion and the police portion separate and shall be accomplished by the following steps:

(1) The actuarial cost for calendar year 2002 for each local pension and relief fund shall be determined;

(2) The actual dollar amount of contributions for calendar year 2002 for each group covered by the system shall be determined;

(3) The total of subdivisions (e)(1) and (2) of this section shall be determined for each city, town, and fire protection district, and this total shall be determined separately for the fire portion and for the police portion, and a combined total of the fire portion and the police portion shall also be determined;

(4) The amount of premium tax revenue allocated to each city, town, and fire protection district in calendar year 2002 shall be determined, and this amount shall be determined separately for the fire portion and for the police portion, and a combined total of the fire portion and the police portion shall also be determined;

(5) A percentage called the "calendar year 2002 percentage of costs covered by premium tax" shall be determined as the ratio of subdivision (e)(4) of this section divided by subdivision (e)(3) of this section, and the percentage shall be determined separately for the fire portion, for the police portion, and for the combined total;

(6)(A) A percentage called the "minimum percentage covered" shall be determined as the lesser of:

(i) The calendar year 2002 percentage of costs covered by premium tax; or

(ii) One hundred percent (100%).

(B) This minimum percentage covered shall be determined separately for the fire portion, for the police portion, and for the combined total.

(C) The minimum percentage covered shall be a fixed percentage and shall not change over time, except as provided in subdivision (e)(6)(E) of this section.

(D) The minimum percentage covered for the volunteer portion of the actuarial cost for a calendar year in the Arkansas Local Police and Fire Retirement System shall be one hundred percent (100%).

(E)(i) The minimum percentage covered shall be adjusted when a local fire or police pension fund assigns administrative responsibility

for the fund to the Arkansas Local Police and Fire Retirement System under §§ 24-10-301 and 24-10-302.

(ii) The minimum percentage covered shall be adjusted so that the dollar amount of premium tax allocated under this section for the year after the assignment of administrative responsibility will be the same as it was the year of the assignment of administrative responsibility.

(iii) For the purpose of this adjustment, subdivision (b)(2)(D) of this section does not apply to the addition of a cost of living adjustment of three percent (3%) compounded each year, provided the addition was a part of the consolidation process;

(7) The actuarial cost for the calendar year of allocation for each local pension and relief fund shall be determined;

(8) The actuarial cost for the calendar year of allocation for each group covered by the system shall be determined;

(9) The total of subdivisions (e)(7) and (8) of this section shall be determined for each city, town, and fire protection district, and this total shall be determined separately for the fire portion and for the police portion, and a combined total of the fire portion and the police portion shall also be determined;

(10)(A) The "first allocation" for each city, town, and fire protection district shall be equal to the result of the minimum percentage covered from subdivision (e)(6) of this section multiplied by subdivision (e)(9) of this section.

(B) This first allocation shall be the greater of:

(i) The "first allocation" for the fire portion plus the "first allocation" for the police portion; or

(ii) The "first allocation" for the combined total;

(11) The results of subdivision (e)(10) of this section shall be reduced, but not below zero (0), by the amount in the subsidy account of the city, town, or fire protection district at the beginning of the calendar year under subsection (f) of this section;

(12)(A) If the total premium tax revenue as determined under subsection (c) of this section is less than the total allocated through subdivision (e)(11) of this section, the total premium tax revenue shall be allocated pro rata on the amounts under subdivision (e)(10) of this section, so that the total through subdivision (e)(11) of this section equals the amount determined under subsection (c) of this section.

(B) If the total premium tax revenue as determined under subsection (c) of this section is more than the total allocated through subdivision (e)(11) of this section, the excess, not to exceed the total of amounts under subdivision (e)(9) of this section minus the amounts under subdivision (e)(10) of this section, shall be allocated pro rata on the excess, if any, of the amounts under subdivision (e)(9) of this section over the amounts under subdivision (e)(10) of this section.

(C) If the total premium tax revenue as determined under subsection (c) of this section is more than the total allocated through

subdivision (e)(11) of this section plus the amount allocated under subdivision (e)(12)(B) of this section, the excess shall be allocated to the Future Supplement Fund-Police or Future Supplement Fund-Fire under § 24-11-212; and

(13) The total amount allocated to a city, town, or fire protection district shall be the sum of amounts under subdivisions (e)(11) and (12) of this section.

(f)(1) The allocation in subdivision (e)(10) of this section is reduced under subdivision (e)(11) of this section by the subsidy account for each city, town, or fire protection district.

(2) The subsidy account for a city, town, or fire protection district as of January 1, 2003, shall be determined by the board to be the excess, if any, of the total premium tax for fire and police pension and relief funds allocated to the city, town, or fire protection district in the calendar years 1997 through 2002 over the sum of:

(A) The contributions paid to the system for calendar years 1997 through 2002; plus

(B) The amount of premium tax allocated to the local pension and relief funds for 1997 through 2002; plus

(C) Any transfers from the "LOPFI subsidy account" to the local pension and relief funds from 1997 through 2002.

(3) Beginning January 1, 2004, and each January 1 thereafter, the subsidy account for a city, town, or fire protection district shall be determined by the board to be:

(A) The subsidy account at the prior January 1; plus

(B) The premium tax allocated in the prior calendar year; minus

(C) The contributions paid to the system for the prior calendar year; minus

(D) The actuarial cost of the local pension and relief funds for the prior calendar year; but

(E) Not less than zero (0).

(g)(1) There shall be allocated amounts to the Future Supplement Fund-Fire and the Future Supplement Fund-Police under § 24-11-212 determined as the amount under subsection (c) of this section multiplied by the ratio of the number as determined in subdivision (g)(1)(A) of this section to the number as determined in subdivision (g)(1)(B) of this section as follows:

(A) The total number of active, retiree, and beneficiary members of all of the fire or police pension and relief funds as of December 31, 2000, minus the total number of active, retiree, and beneficiary members of all of the fire or police pension and relief funds as of the most recent December 31; and

(B) The number of active, retiree, and beneficiary fire or police members of the system plus the total number of active, retiree, and beneficiary members of all of the fire or police pension and relief funds as of December 31, 2000.

(2) In the case of multiple beneficiaries of a single deceased member, those beneficiaries shall be counted as one (1) for the purposes of this subsection.

(3) In the case of paid service and volunteer service members in one (1) location, one (1) paid service member shall be equal to five (5) volunteer service members for the purposes of this subsection.

(h)(1)(A) All cities, towns, and fire protection districts having fire departments organized under §§ 24-11-801 — 24-11-807, 24-11-809, 24-11-813 — 24-11-815, and 24-11-818 — 24-11-820, 24-11-821 [repealed], and all cities and towns having police departments organized under § 24-11-101 et seq., § 24-11-201 et seq., § 24-11-301 et seq., § 24-11-401 et seq., and §§ 24-11-801 — 24-11-807, 24-11-809, 24-11-811 — 24-11-820, 24-11-821 [repealed], 24-11-822 — 24-11-827, 24-11-829, and 24-11-830 that have provided the information required under §§ 24-11-213(d) and 24-11-206 to the board and to the system shall qualify for participation in the revenues distributed.

(B) Those cities, towns, and fire protection districts that make an irrevocable decision to elect coverage in the Arkansas Local Police and Fire Retirement System by December 14 shall qualify for participation in the revenues distributed in the following calendar year.

(C) Those cities, towns, and fire protection districts that have not provided the required information shall not qualify for participation in the revenues distributed.

(2) On or before June 15 of each calendar year after 2002, the board shall certify to the Department of Finance and Administration the exact amount of tax revenues each city, town, or fire protection district is entitled to receive for the calendar year under this section.

(3)(A) The eligibility of the city, town, or fire protection district shall be continuous for a ten-year period without recertification unless otherwise directed by the board.

(B) The first year of implementation shall require a nine-year cycle from June 15, 2001.

(C) Thereafter, each city, town, or fire protection district shall resubmit the information required in § 24-11-213(d)(2) and (3) every ten (10) years beginning on December 15, 2010.

(4) The Arkansas Fire Training Academy and the Arkansas Law Enforcement Training Academy are not eligible for participation in the receipt of or funding with premium tax revenues.

(i) All nonprofit corporations formed for fire protection purposes and that participate in the system shall participate in the distribution of insurance premium tax revenues to the same extent as other fire protection organizations under this section, §§ 24-10-401 — 24-10-409, 24-11-809, and 26-57-610, and any other laws providing for the distribution of insurance premium tax moneys to fire protection organizations.

(j)(1) There shall be no administrative fees charged to these entities by the board upon qualification.

(2) The board shall incur all administrative and actuarial costs associated with obtaining the information required under this section.

(k)(1) The board shall establish a certain percentage of the insurance tax revenues to use to meet its proper actuarial expenses and admin-

istrative costs incurred in obtaining and evaluating the population information required under § 24-11-213, but in no event shall the board be entitled to more than one percent (1%) of the Firemen's and Police Officers' Pension and Relief Fund as defined in § 24-11-809(a)(2).

(2) This assessment shall be collected in addition to the assessment provided in § 24-11-203(k)(3).

(3) This revenue shall also be used to provide the administrative costs incurred in obtaining and evaluating the population information for unqualified cities, towns, and fire protection districts.

(1)(1) Beginning with the allocation in fiscal year 2012, the amount allocated to groups that are members of the Arkansas Local Police and Fire Retirement System excluding consolidation costs under subdivision (b)(2)(A)(iv) of this section is the actuarial cost under subdivision (b)(2) of this section multiplied by the factor in § 24-11-215(f).

(2) For the allocations in fiscal years 2012 — 2015, the actuarial cost less the allocation amount shall not increase by more than one percent (1%) of covered payroll each year above the allocation amount in fiscal year 2011.

(3) For the allocations in fiscal years 2012 — 2015, any amount needed to meet the transition under subdivision (1)(2) of this section shall proportionately reduce the percent of payroll of the other groups.

(m) Beginning with the allocation in fiscal year 2012, the amount allocated to groups that are covered by a local pension and relief fund including consolidation costs under subdivision (b)(2)(A)(iv) of this section is the actuarial cost under subdivision (b)(2) of this section multiplied by the factor in § 24-11-215(f).

(n) The Arkansas Fire and Police Pension Review Board shall promulgate rules that are necessary to implement this section.

History. Acts 2003, No. 1797, § 1; 2007, No. 73, § 4; 2007, No. 609, §§ 1, 2; 2009, No. 259, § 1; 2009, No. 654, § 4; 2011, No. 979, § 5; 2013, No. 41, § 8; 2013, No. 522, § 4.

Amendments. The 2009 amendment by No. 259 inserted "except as provided in subdivision (e)(6)(E) of this section" in (e)(6)(C); added (e)(6)(E); and made related changes.

The 2009 amendment by No. 654 substituted "§ 24-11-213(d)(2) and (3)" for

"subdivisions (a)(2) and (3) of this section" in (h)(3)(C).

The 2011 amendment inserted (b)(2)(iv); deleted "dollar" preceding "cost" in (b)(2)(B); inserted (b)(2)(E); and added (l) through (n).

The 2013 amendment by No. 41 deleted (e)(13)(B) and redesignated (e)(13)(A) as (e)(13).

The 2013 amendment by No. 522 added (h)(4).

24-11-215. Allocation of insurance premium tax — Special provisions.

(a) Revenues distributed to the State of Arkansas as general revenue are subject to the allocations in this section.

(b)(1) All taxes that are levied on insurers that are allocated to general revenues under § 24-11-213 may be allocated to the Fire Protection Premium Tax Fund, underfunded plans under § 24-11-217, and then to general revenues.

(2)(A) For the 1999-2000 state fiscal year, six hundred thousand dollars (\$600,000) of the fire portion of funds transferred to general revenues under this section and § 24-11-213 shall be transferred to the Fire Protection Premium Tax Fund.

(B) In all subsequent years fifty percent (50%) of the percentage increase in the amount allocated to general revenues under this section and § 24-11-213, using the dollar amount allocated in fiscal year 1999-2000 as the baseline, shall be transferred to the Fire Protection Premium Tax Fund in addition to the six hundred thousand dollars (\$600,000) per year until the time that a cap of two million dollars (\$2,000,000) annually is transferred to the Fire Protection Premium Tax Fund.

(C) Thereafter, the annual transfer shall be set at two million dollars (\$2,000,000).

(c) After transfers are made to cover funds distributed under subsection (b) of this section and the portion of those premium taxes set aside for transfer to the State Police Retirement Fund under § 24-6-209(b), the Director of the Department of Finance and Administration is directed to make annual transfers from the police portion of the revenues to the Policemen's Pension Supplement Program Fund on or before July 25, 1999, and each year thereafter as certified by the Arkansas Fire and Police Pension Review Board on July 1 each year as the amount needed to pay the expenses of and to make payments to the eligible retired police officers and survivors under the Arkansas Policemen's Pension Supplement Program for the coming year of the program.

(d) Fifty percent (50%) of the increase in the amount allocated to general revenues under § 24-11-213, using the dollar amount allocated in fiscal year 1999-2000 as the base amount, shall be transferred to the Future Supplement Fund-Police under § 24-11-212.

(e) The amounts under § 24-11-217 shall be reduced proportionately so that the remainder portion for general revenue does not fall below four million dollars (\$4,000,000).

(f)(1)(A) The factor applied to groups allocated under § 24-11-214(l) is forty percent (40%).

(B) The factor applied to groups allocated under § 24-11-214(m) is thirty percent (30%).

(2) The factors under subdivision (f)(1) of this section may be reduced proportionately to meet the following criteria:

(A) The general revenue portion resulting from this subsection does not fall below four million dollars (\$4,000,000); and

(B) If the amount resulting from the percentages under subdivision (f)(1) of this section and the amounts in subsections (b)-(d) of this section in total reduce the general revenue portion of the allocation below four million dollars (\$4,000,000), the amounts resulting from the percentages take precedence.

History. Acts 2003, No. 1797, § 1; tee Fund” in (b)(1); deleted (b)(3) and 2011, No. 979, § 6; 2013, No. 41, § 9. (b)(4); and substituted “Arkansas Fire and

Amendments. The 2011 amendment inserted “underfunded plans under § 24-11-217” in (b)(1); and added (e) and (f). Police Pension Review Board” for “board” in (c).

The 2013 amendment deleted “the Arkansas Fire and Police Pension Guarantees

24-11-216. Minimum asset management standards.

(a) A local pension and relief fund shall meet the minimum asset management standards established under this section.

(b)(1) A local pension and relief fund shall be deemed to have met the minimum asset management standards if:

(A) The local pension and relief fund has a legally constituted board of trustees under §§ 24-11-405 and 24-11-801;

(B) The board of the local pension and relief fund meets at least two (2) times annually;

(C) The local pension and relief fund is actuarially sound as defined by the Arkansas Fire and Police Pension Review Board;

(D)(i) The rate of return earned by the local pension and relief fund over the most recent three-year period is at least equal to the rate of return for one-year United States Treasury notes over the most recent three-year period.

(ii) A higher standard for rate of return may be set by rule of the Arkansas Fire and Police Pension Review Board; and

(E) The local pension and relief fund has been in compliance with this subchapter under § 24-11-202 in two (2) of the past three (3) years.

(2) A local pension and relief fund shall meet the requirements of this section on or before December 31, 2008, and each year thereafter.

(c) If the Arkansas Fire and Police Pension Review Board determines that a local pension and relief fund does not meet the minimum asset management standard under subsection (b) of this section, the Arkansas Fire and Police Pension Review Board shall:

(1) Notify the local pension and relief fund and the sponsoring municipality of the local pension and relief fund of that fact and advise the local pension and relief fund of the steps necessary to comply with the standards; and

(2) Require the local pension and relief fund to:

(A) Establish a written investment policy that incorporates the rate of return established under subdivision (b)(1)(D) of this section and other requirements in accordance with rules promulgated by the Arkansas Fire and Police Pension Review Board; and

(B) Obtain professional investment management in accordance with rules promulgated by the Arkansas Fire and Police Pension Review Board.

(d) If the local pension and relief fund or its sponsoring municipality does not comply with subsection (c) of this section within six (6) months of the notification by the Arkansas Fire and Police Pension Review

Board, then the local pension and relief fund shall develop a written plan of action in conjunction with the Arkansas Fire and Police Pension Review Board in accordance with rules promulgated by the Arkansas Fire and Police Pension Review Board.

(e) The Arkansas Fire and Police Pension Review Board shall promulgate rules necessary to implement the provisions of this section.

History. Acts 2007, No. 851, § 1; 2009, inserted “with this subchapter” in No. 654, § 5. (b)(1)(E).

Amendments. The 2009 amendment

24-11-217. Additional allocation for certain underfunded plans.

(a)(1) Beginning with the allocation in fiscal year 2012, an additional allocation for certain underfunded plans as described in this section is created.

(2) The additional allocation replaces the Arkansas Fire and Police Pension Guarantee Fund under § 24-11-209 [repealed] after the allocation in fiscal year 2015.

(b) The additional allocation shall be based on ten percent (10%) of the actuarial cost under § 24-11-214 and shall be available for certain pension and relief funds, including the portion of the actuarial cost for pension and relief funds that are administered by the Arkansas Local Police and Fire Retirement System.

(c) The pension and relief funds shall qualify for the additional allocation after approval of the Arkansas Fire and Police Pension Review Board and after meeting the following criteria:

(1) The pension and relief fund is in compliance with all applicable laws and rules; and

(2) The pension and relief fund shall receive employer contributions other than premium tax allocations that are at least eighty percent (80%) of the actuarial cost under § 24-11-214 during the calendar year before an allocation.

(d) For the allocations in fiscal years 2012 through 2015, the amount of the additional allocation to a pension and relief fund shall not be less than would have been provided by the Arkansas Fire and Police Pension Guarantee Fund under § 24-11-209 [repealed].

(e) The amounts provided under this additional allocation are subject to the limits under § 24-11-215.

History. Acts 2011, No. 979, § 7; 2013, rewrote (a)(2); and substituted “2012 through 2015” for “2012 — 2015” in (d). No. 500, § 1.

Amendments. The 2013 amendment

SUBCHAPTER 3 — POLICE PENSION AND RELIEF FUNDS GENERALLY

SECTION.

24-11-301. Appropriation of tax revenues from foreign insurers.

SECTION.

24-11-302. [Repealed.]

24-11-303. [Repealed.]

Effective Dates. Acts 2003, No. 1797, § 7: Apr. 23, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that premium tax distribution formula is directing state revenues to areas without the need for priority fire and police protection; that police and fire protection services are of extreme importance in the protection of property values and individual lives; that the distribution of premium tax revenues to the areas of the highest need is a top priority; that implementation of a revised distribution formula must be implemented before the normal time for the effectiveness of other laws; and that this act needs to be immediately effective to fulfill that priority. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during

which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2013, No. 41, § 37: Feb. 6, 2013. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the local police and fire retirement systems provide economic security for eligible citizens of Arkansas; that the statutes need amending to update and clarify existing law; and that these changes need to be made immediately. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

24-11-301. Appropriation of tax revenues from foreign insurers.

(a)(1) Sixty-six and two-thirds percent (66 $\frac{2}{3}\%$) of the total tax revenues derived from premium taxes paid to the State of Arkansas by alien and foreign insurance companies upon premiums collected by the insurance companies upon insurance contracts written on motor vehicles, the licensed addresses of which are qualified cities or towns wherein the motor vehicles are insured against the perils of physical damage or the owner or operators of the motor vehicles are insured against legal liability arising out of the use, ownership, or operation of the motor vehicles, is appropriated and set aside for the:

(A) Use and benefit of all duly qualified police officers' pension and relief funds;

(B) Administrative and actuarial expenses of the Arkansas Fire and Police Pension Review Board; and

(C) Arkansas Policemen's Pension Supplement Program.

(2) The premium taxes collected in this subsection shall be placed in a fund combined with the premium taxes collected pursuant to § 24-11-809. The combined fund shall be entitled the "Firemen's and Police Officers' Pension and Relief Fund".

(b) The amount of the tax revenues attributable to the fire peril of physical damage insurance shall not be included.

History. Acts 1981, No. 270, § 2; 1985, No. 992, § 3; A.S.A. 1947, § 66-2305; Acts 1995, No. 1266, § 4; 1999, No. 1394, § 1; 1999, No. 1452, § 1; 1999, No. 1570, § 1; 2001, No. 1540, § 3; 2003, No. 1797, § 2; 2013, No. 41, § 10.

24-11-302. [Repealed.]

Publisher's Notes. This section, concerning cities and towns qualified to participate and certain required reports, was repealed by Acts 2003, No. 1797, § 5. The section was derived from Acts 1981, No. 270, §§ 3, 4; 1983, No. 664, § 1; 1985, No.

Amendments. The 2013 amendment deleted former (a)(1)(C) and redesignated former (a)(1)(D) as present (a)(1)(C).

304, § 1; A.S.A. 1947, §§ 66-2306, 66-2307; Acts 1995, No. 1266, § 5; 1997, No. 119, § 1; 1999, No. 1452, § 2; 1999, No. 1570, § 2; 2001, No. 1539, § 1; 2001, No. 1540, § 1; 2001, No. 1543, § 4; 2001, No. 1701, §§ 2-4.

24-11-303. [Repealed.]

Publisher's Notes. This section, concerning payment, was repealed by Acts 2013, No. 41, § 11, effective Feb. 6, 2013.

The section was derived from Acts 1981, No. 270, § 5; A.S.A. 1947, § 66-2308.

SUBCHAPTER 4 — POLICE PENSION AND RELIEF FUNDS — CITIES OF THE FIRST CLASS

SECTION.

- 24-11-402. Vote to effect subchapter.
- 24-11-404. Tax levy for pensions in cities of first and second class.
- 24-11-405. Board of trustees.
- 24-11-406. Administration of small funds by Arkansas Local Police and Fire Retirement System.
- 24-11-410. Investment.
- 24-11-411. Payments.
- 24-11-413. Moneys added to fund — Contributions.
- 24-11-415. Proceeds derived from sale of confiscated goods.
- 24-11-418. Former military service credit purchase.
- 24-11-419. [Repealed.]
- 24-11-422. Benefits — Voluntary retirement.

SECTION.

- 24-11-423. Benefits — Disability retirement.
- 24-11-425. Benefits — Death of active or retired member.
- 24-11-426. Optional vesting rights policy.
- 24-11-430. Death benefit.
- 24-11-433. Police pension funds — Partial disability pensions.
- 24-11-434. Deferred retirement option plan.
- 24-11-435. [Repealed.]
- 24-11-436. Military service.
- 24-11-437. Credited service — Purchase of former law enforcement service.
- 24-11-438. Police-related service.

Effective Dates. Acts 2009, No. 1201, § 9: Apr. 7, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the statutes relating to payments from the local pension and relief funds need amending in order for the investments of the assets in the local pension

and relief funds to be consistent with the practicalities of the market. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by

the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2009, No. 1480, § 117: Apr. 10, 2009. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act makes various revisions to Arkansas election laws that are designed to improve the administration of elections and special elections and that these revisions should be implemented as soon as possible so that the citizens of this state may benefit from improved election procedures. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2011, No. 556, § 6: Mar. 22, 2011. Emergency clause provided: “It is found and determined by the General Assembly that the Arkansas Fire and Police Pension Review Board is in place to provide economic security for eligible citizens of Arkansas, that the statutes need amending

to account for changes in the economy, and that these citizens need to be immediately covered by these changes. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2013, No. 41, § 37: Feb. 6, 2013. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the local police and fire retirement systems provide economic security for eligible citizens of Arkansas; that the statutes need amending to update and clarify existing law; and that these changes need to be made immediately. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

24-11-402. Vote to effect subchapter.

(a) The provisions of this subchapter shall be suspended and inoperative in any city affected by the provisions of this subchapter until made available by a vote favorable thereto of the majority of qualified electors of the cities participating in any election on the question and held at a special election in accordance with § 7-11-201 et seq. for the purpose of voting on the question.

(b) The election may be held in connection with the first general city election following the passage and approval of this subchapter, but the failure to submit at that city or other election shall not defeat the right of submission at any subsequent election.

(c) Upon filing with the county board of election commissioners not later than seventy (70) days before the date of the election the petition signed by twenty (20) or more qualified electors of the city affected and praying that the question of police officers’ pensions be submitted, it

shall be the duty of the county board of election commissioners to place the question upon the ballot.

(d) In the event that for any reason the question of policemen’s pension was not voted upon in the next general city election after June 10, 1937, the question may be submitted at a special election in accordance with § 7-11-201 et seq. held in the city as provided in this section.

(e) The question on the ballot shall be as follows:

“FOR Police Officer’s Pension ☐
AGAINST Police Officer’s Pension ☐”.

History.
Acts 1937, No. 250, § 22; Pope’s Dig., § 9877; A.S.A. 1947, § 19-1821; Acts 2005, No. 2145, § 62; 2007, No. 1049, § 84; 2009, No. 1480, §§ 102, 103.

Amendments. The 2009 amendment substituted “§ 7-11-201 et seq.” for “§ 7-5-103(b)” in (a) and (d).

24-11-404. Tax levy for pensions in cities of first and second class.

(a)(1) After being once approved by a majority of those voting on the question at any general or special election in any city of the first class or city of the second class, a tax not to exceed one (1) mill on the dollar upon the assessed value of the real and personal property of the city shall be levied annually by the city for the purpose of paying police officers’ retirement salaries and pensions, as well as pensions to the surviving spouses and minor children of deceased police officers and the surviving spouses and minor children of deceased retired police officers.

(2) The levy shall be made by the city council or other governing body of the city on or before the time fixed by law for levying county taxes, and the city council or other governing body shall make out and certify to the county clerk the rate of taxation levied by the municipal corporation on the real and personal property within the city.

(3) The amount so certified shall be placed upon the tax book by the county clerk of the county and collected in the same manner that state and county taxes are collected and shall be turned over to the board of trustees of the policemen’s pension and relief fund of the city.

(b)(1) In those cities that do not have a policemen’s pension and relief fund but that cover their police officers under the Arkansas Local Police and Fire Retirement System, the tax shall also be allowed when approved by a majority of qualified electors of the cities participating in any election on the question and held at a special election in accordance with § 7-11-201 et seq. for the purpose of voting on the question.

(2) The election may be held in connection with the first general city election following March 6, 1989, but the failure to submit at a city or other election shall not defeat the right of submission at any subsequent election.

(3) Upon the filing with the county board of election commissioners not later than ninety (90) days before the date of the election requested

in a petition signed by twenty (20) or more qualified electors of the city affected and praying that the question of a policemen’s pension be submitted, it shall be the duty of the county board of election commissioners to call the election in accordance with § 7-11-201 et seq.

(4) In the event that for any reason the question of the policemen’s pension is not voted upon in the next general city election after March 6, 1989, the question may be submitted at a special election held in the city as provided in this subsection.

(5) The question on the ballot shall be as follows:
“FOR Police Officer’s Pension[]
AGAINST Police Officer’s Pension[]”.

(6) The tax so levied shall not exceed one (1) mill on the dollar upon the assessed value of the real and personal property of the city or town.

(c) Once so approved, the tax shall be levied and certified in the same manner as provided in this section and shall be collected and turned over to the city or town for the sole purpose of making payment for coverage of employees under the Arkansas Local Police and Fire Retirement System.

(d) A vote on the question of the tax provided for in this section shall be had in the same manner that the Arkansas Constitution and laws of this state provide for the initiation of measures in municipalities.

(e) The funds provided for in this section shall be supplemental and in addition to any funds provided for by any laws in effect at the time of passage of this section and shall become part of the policemen’s pension and relief fund of the city and be administered by the board of trustees of the policemen’s pension and relief fund for the same class of beneficiaries and in the same manner as prescribed by law.

(f) In those cities that cover their police officers under the Arkansas Local Police and Fire Retirement System, the funds shall be applied to each city’s account in that system, in such manner and amounts as determined by the Board of Trustees of the Arkansas Local Police and Fire Retirement System, if:

- (1) The city does not have a policemen’s pension and relief fund; or
- (2) The city has consolidated administration of its policemen’s pension and relief fund with the Arkansas Local Police and Fire Retirement System, even if there are no longer any members or beneficiaries remaining under the city’s policemen’s pension and relief fund.

History. Acts 1941, No. 16, §§ 1, 2, 4; 1985, No. 900, §§ 1, 3; A.S.A. 1947, §§ 19-1707, 19-1708, 19-1710; Acts 1989, No. 341, § 1; 2005, No. 2145, § 63; 2007, No. 608, § 1; 2007, No. 1049, § 85; 2009, No. 1480, § 104.

Amendments. The 2009 amendment substituted “§ 7-11-201 et seq.” for “§ 7-5-103(b)” in (b)(1) and (b)(3).

24-11-405. Board of trustees.

(a) The board of trustees of the policemen’s pension and relief fund shall consist of seven (7) members as follows:

(1) The chief executive officer of the city, who shall be chair of the board;

(2) The city treasurer, who shall be treasurer of the fund;

(3)(A)(i) Five (5) active or retired members of the pension fund.

(ii)(a) The active pension fund members shall elect the active members by secret written ballot in May of each year, with the member or members to be chosen in alternating years.

(b) The retired member or members shall be chosen in May of each year by a method to be determined by the board, with the member or members to be chosen in alternating years.

(c) All member trustees shall serve two-year terms.

(d) In the event of a vacancy in a board position, the board of trustees shall appoint a replacement to serve the remainder of the unexpired term.

(iii) If there are no active members of the pension fund, all five (5) employee members shall be elected by the retired membership of the pension fund and the surviving spouses of deceased members currently receiving benefits.

(B) The board shall select one (1) of the police members as secretary of the board to serve for a period of two (2) years or until his or her successor is elected and qualified.

(C) However, if no retirant is available to serve on the board, all five (5) employee positions shall be held by active members of the pension fund and shall be elected by secret ballot by the active members of the pension fund for two-year terms as provided in subdivision (a)(3)(A) of this section.

(D) The board shall have the power to make all rules needful for its guidance to implement the provisions regarding board composition; and

(4) The number of active members or retired members to serve on the board shall be determined by the proportionate number of active members to retired members as follows:

(A) When the number of active members equals seventy-five percent (75%) of the total of retired members and active members, the board shall be composed of four (4) active members and one (1) retired member;

(B) When the number of active members equals fifty percent (50%) of the total of retired members and active members, the board shall be composed of three (3) active members and two (2) retired members; and

(C) When the number of retired members equals seventy-five percent (75%) of the total of retired members and active members, the board shall be composed of one (1) active member and four (4) retired members.

(b) The police officer members of the board shall serve for a period of two (2) years or until their successors are elected and qualified.

(c) The board shall have the absolute control and management of the funds provided for in this subchapter and of all moneys donated, paid,

or assessed for the relief or pension of disabled, superannuated, and retired members of the police department, their surviving spouses and minor children, or dependent parents solely dependent upon members for their support.

(d)(1) The board shall make all necessary rules for its government and the discharge of its duties and shall hear and decide all applications for relief or pension under this subchapter.

(2) All decisions upon applications shall be final and conclusive and not subject to review or reversal except by the board.

(3) The board shall keep a record of all its meetings and proceedings.

(e)(1) Each member of the board of trustees of the policemen's pension and relief fund who receives gifts or other compensation that in total exceeds one hundred dollars (\$100), including, but not limited to, trips and meals, from current or potential investment advisors or managers of the policemen's pension and relief fund shall prepare an annual statement listing:

(A) Each item received;

(B) The estimated value of each item; and

(C) From whom each item was received.

(2)(A) Each member of the board of trustees of the policemen's pension and relief fund shall attest by written affidavit that the member's annual statement is true and current to the best of his or her knowledge.

(B)(i) An annual statement and affidavit from each member of the board of trustees of the policemen's pension and relief fund shall be collected by the board of trustees of the policemen's pension and relief fund or the municipal treasurer.

(ii) One (1) copy of the statement and affidavit shall be filed with the Secretary of State.

(iii) A second copy of each statement and affidavit shall be retained on file by the board of trustees of the policemen's pension and relief fund or the municipal treasurer and shall be available for review by any plan participant.

(C)(i) As part of the annual report to the Arkansas Fire and Police Pension Review Board, the chair of each board of trustees of the policemen's pension and relief fund for each plan shall certify that the statements and affidavits as described in this subsection have been completed and appropriately filed.

(ii) Each plan's annual report shall not be considered complete without this certification.

History. Acts 1937, No. 250, §§ 3, 4; Pope's Dig., §§ 9858, 9859; Acts 1985, No. 390, § 1; A.S.A. 1947, §§ 19-1803, 19-1804; Acts 1987, No. 405, § 2; 1991, No. 365, § 1; 2003, No. 778, § 1; 2005, No. 386, § 1; 2005, No. 2094, § 3; Acts 2007, No. 611, § 1; 2007, No. 827, § 192; 2009, No. 260, § 1.

A.C.R.C. Notes. Pursuant to Acts 2007, No. 827, § 240, the amendment of § 24-11-405 by Acts 2007, No. 611, § 1 supercedes the amendment of § 24-11-405 by Acts 2007, No. 827, § 192.

Amendments. The 2009 amendment inserted "that in total exceed one hundred dollars (\$100)" in (e)(1).

24-11-406. Administration of small funds by Arkansas Local Police and Fire Retirement System.

(a)(1) In those local police pension and relief funds that cover fewer than five (5) members, a local board of trustees may no longer exist, and the fund shall be designated as inactive by the employer.

(2) As used in this section, "member" includes an active member or a retired member of the fund described in subdivision (a)(1) of this section but does not include beneficiaries.

(b) Administrative responsibility for the fund shall be assigned to the Arkansas Local Police and Fire Retirement System, as allowed by §§ 24-10-301 and 24-10-302 and as provided in the following procedure:

(1)(A) The actuary under contract to the system shall compute the retirement reserve for vested and active members and for eligible beneficiaries of the inactive fund. After receiving the report of the actuary, the employer shall transfer the computed reserve to the system to be held in an account designated as the retirement reserve for the inactive fund and from which the system shall pay eligible beneficiaries.

(B) The retirement reserve and any additional employer contributions shall include such amounts as are necessary to provide administrative expenses for the system, but such expenses shall not exceed a total of one-half of one percent (0.5%) of active member payroll, if any, plus one percent (1%) of annual reserve assets;

(2) Any excess assets of the fund remaining after the retirement reserve is created shall be transferred to an account designated by the employer, to be used solely for the purpose of making payments to the system for employee coverage administered under the system and for no other purpose;

(3) If a former member of the local pension fund returns to service in which the employee would have again become a member of the local fund, the past service credit may be purchased by the employer for the employee under the system, and the purchase costs shall be amortized in the same manner as other service credit purchases are amortized under the system;

(4)(A) Retired members and beneficiaries of any inactive fund under administration of the system that was actuarially sound before being designated inactive shall be eligible for annual redetermination of benefits as defined in § 24-10-612.

(B) Should the law mandate an increase in benefits to retired members or their beneficiaries, the increases shall be payable from the retirement reserve of the inactive fund.

(C) No prorating of benefits shall be allowed in inactive funds under the administration of the system.

(D) If the retirement reserve of an inactive fund shall become inadequate to pay full benefits to eligible recipients, the system shall require of the employer, and the employer shall remit, such actuarially computed amounts as are necessary to pay full benefits to current and future eligible recipients;

(5)(A) Once a fund becomes inactive and a retirement reserve is created as required by this section, the employer may continue to collect such millages, fines, fees, state insurance tax turnback, and other revenues as allowed by law for the support of police retirement programs.

(B) The revenues shall be deposited locally in an account designated by the employer solely for making payments to the system and shall be used for no other purpose; and

(6)(A) All employer contributions for inactive funds shall be made in such amounts, and in such manner, form, and frequency, as the Board of Trustees of the Arkansas Local Police and Fire Retirement System shall require.

(B) The pension records of inactive funds, and other materials and reports as may be required by the board to administer the inactive funds, shall be provided to the Arkansas Local Police and Fire Retirement System in such manner as the board shall require.

History. Acts 1937, No. 250, § 4; Pope's A.S.A. 1947, § 19-1804; Acts 2007, No. Dig., § 9859; Acts 1985, No. 927, § 1; 1056, §§ 1, 2.

24-11-410. Investment.

(a) The board of trustees of the policemen's pension and relief fund shall have the power to draw sums from its treasury, only upon warrants signed by the chair of the board of trustees of the policemen's pension and relief fund and countersigned by the policemen's pension and relief fund, to invest in the name of the board in interest-bearing bonds of the United States, of the State of Arkansas, or of the city in which the board is located, in a local government joint investment trust pursuant to the Local Government Joint Investment Trust Act, § 19-8-301 et seq., in the Arkansas Local Police and Fire Retirement System, or in savings and loan associations duly established and authorized to do business in this state.

(b) Except as provided in subsection (c) of this section, all securities shall be deposited with the treasurer of the board of trustees of the policemen's pension and relief fund and shall be subject to the order of the board.

(c)(1) In those policemen's pension and relief funds in which assets exceed one hundred thousand dollars (\$100,000), the board may employ:

(A) An investment advisor as defined in § 24-10-402(a)(2)(A)(ii) to invest the assets, subject to the terms, conditions, limitations, and restrictions imposed by law upon the Arkansas Local Police and Fire Retirement System, as provided by § 24-10-401 et seq.; and

(B) A trustee or custodian to hold the assets.

(2) Investments shall not be limited to interest-bearing bonds.

(3) The total amount of fees paid for investment advisors, investment advisory services, investment educational services, trustee services, custodial and administrative services, and investment management

services when the managers are required to perform security trades on a best execution basis shall be:

(A) Limited to no more than three percent (3%) annually of the first five hundred thousand dollars (\$500,000) of plan assets, plus no more than two percent (2%) annually of the next five hundred thousand dollars (\$500,000) of plan assets, plus no more than one percent (1%) annually of plan assets over one million dollars (\$1,000,000); and

(B) Clearly stated, in total, on all monthly, quarterly, and annual statements prepared for the board.

History. Acts 1937, No. 250, § 5; Pope's Dig., § 9860; Acts 1957, No. 121, § 1; 1985, No. 6, § 2; 1985, No. 16, § 2; A.S.A. 1947, § 19-1805; Acts 1989, No. 152, § 3; 1995, No. 615, § 2; 2005, No. 2094, § 1; 2009, No. 1201, §§ 1, 2.

Amendments. The 2009 amendment inserted "Except as provided in subsection (c) of this section" in (b); inserted (c)(1)(B) and redesignated the existing text of (c)(1) accordingly; and made related changes.

24-11-411. Payments.

(a) Except as provided in subsection (c) of this section, all moneys paid from the pension and relief fund shall be paid by the treasurer only upon warrants signed by the chair and countersigned by the secretary thereof.

(b) Except as provided in subsection (c) of this section, no warrant shall be drawn except by order of the board, and interest accruing from the fund while on deposit or otherwise shall constitute a part of the fund.

(c) In a policemen's pension and relief fund in which the board has employed a trustee or custodian under § 24-11-410(c) to hold the assets, the trustee or custodian may pay benefits to persons and beneficiaries entitled to benefits under the fund as directed by the board.

History. Acts 1937, No. 250, § 6; Pope's Dig., § 9861; A.S.A. 1947, § 19-1806; Acts 2009, No. 1201, § 3.

inserted "Except as provided in subsection (c) of this section" in (a) and (b); added (c); and made related changes.

Amendments. The 2009 amendment

24-11-413. Moneys added to fund — Contributions.

(a) There shall be added to the policemen's pension and relief fund the following moneys:

(1) All forfeitures and fines imposed upon any member of the police department by way of discipline;

(2) All money given or donated to the fund;

(3) All money deducted from the salary of any member of the police department on account of absence or loss of time;

(4) All rewards paid for any purpose;

(5) Ten percent (10%) of all fines and forfeitures, not including court costs, collected by the county or city official, agency, or department

designated pursuant to § 16-13-709 as primarily responsible for the collection of fines assessed in the district courts of this state for violation of ordinances or state law that pursuant to law would be deposited in the city general fund and are not designated by law as payable to the county or state agencies or entities; and

(6)(A) Six percent (6%) of the monthly salary of each member of the department, to be deducted each month by the city and immediately paid to the board of trustees of the policemen's pension and relief fund.

(B) However, the monthly deduction shall be four percent (4%) for police officers contributing to social security unless increased, but not to exceed six percent (6%), by the majority vote of the contributing members of a police department covered by social security.

(b) All cities and towns in which a policemen's pension and relief fund is established shall contribute to the fund an amount not less than six percent (6%) of the police officers' salary.

(c) The contributions by cities and towns shall not exceed the amount contributed by the police officers, except where authorized by appropriation of the city's or town's governing body.

(d) A pension and relief fund that has assigned administrative responsibility for the fund to the Arkansas Local Police and Fire Retirement System under § 24-11-406 continues to be eligible to collect and deposit the amounts under subsection (a) of this section as contributions.

History. Acts 1937, No. 250, § 2; Pope's Dig., § 9857; Acts 1939, No. 11, §§ 1, 2; 1953, No. 86, § 1; 1957, No. 415, § 1; 1963, No. 211, § 1; 1969, No. 68, § 1; 1981, No. 486, § 2; 1983, No. 46, § 1; A.S.A. 1947, § 19-1802; Acts 1989, No. 187, § 1; 1993, No. 1289, § 1; 2001, No. 1809, § 9; 2005, No. 1934, § 16; 2009, No. 259, § 2.

A.C.R.C. Notes. This section has been corrected to restore language that was inadvertently omitted when the section was printed in the previous supplement.

Amendments. The 2009 amendment added (d).

24-11-415. Proceeds derived from sale of confiscated goods.

(a)(1)(A) In all cities and towns, all goods confiscated by a police officer of the city, by the sheriff, or by an officer of the Department of Arkansas State Police within the city and that are no longer needed as evidence shall be sold at auction or Internet auction.

(B) The auction or Internet auction shall be held at least annually or more often if the city determines appropriate.

(C) The proceeds derived from the sale of all confiscated goods shall be deposited into the city's policemen's pension and relief fund.

(2) Subdivision (a)(1) of this section shall not supersede any existing provisions of law governing the disposition of confiscated goods.

(b)(1) Until such time as the pension and retirement fund is actuarially sound as determined by the actuary under contract with the Arkansas Fire and Police Pension Review Board, in all cities and towns

all moneys confiscated by a police officer of the city, by the sheriff, or by an officer of the Department of Arkansas State Police within the city shall be deposited into the city's policemen's pension and retirement fund.

(2) Subdivision (b)(1) of this section shall not supersede any existing provisions of law governing the disposition of confiscated moneys.

(3) At the time that the pension and retirement fund is actuarially sound, all moneys received under this subsection shall be retained by the city.

(c) A pension and relief fund that has assigned administrative responsibility for the fund to the Arkansas Local Police and Fire Retirement System under § 24-11-406 continues to be eligible to collect and deposit these amounts as contributions until the unfunded liability as a result of the consolidation has been fully amortized.

History. Acts 1977, No. 745, § 1; A.S.A. 1947, § 19-1802.2; Acts 2001, No. 1832, § 1; 2003, No. 1349, § 1; 2009, No. 31, § 1; 2009, No. 259, § 3.

Amendments. The 2009 amendment by No. 31 redesignated (a)(1), inserted "or

Internet auction" in (a)(1)(A) and (B), substituted "relief" for "retirement" in (a)(1)(C), and made related changes.

The 2009 amendment by No. 259 added (c).

24-11-418. Former military service credit purchase.

(a) Any active member of a policemen's pension and relief fund may purchase credited service in the pension fund equivalent to a period not to exceed five (5) years for service rendered by the member while on active duty in the armed forces of the United States before the member's employment covered by the pension fund, if the member:

- (1) Received an honorable discharge from the armed forces;
- (2) Has at least twenty (20) years of actual service in the pension fund; and

(3)(A) Contributes to the pension fund an amount that is the actuarial equivalent of the value of the credited service to be purchased.

(B) The actuarial equivalent is of the time of the purchase of the credited service and shall be determined by the actuary for the Arkansas Fire and Police Pension Review Board or for a pension fund under administration of the Arkansas Local Police and Fire Retirement System, the actuary for that system.

(b) The board of trustees of the pension fund shall make the final determination as to the:

- (1) Length of purchased service credit;
- (2) Amount of regular interest to be charged; and
- (3) Manner in which payment is made to the pension fund.

(c) Service credit purchased under this section shall be used to determine the member's total credited service under the pension fund but shall not be used to determine his or her final average pay under the pension fund.

History. Acts 1981, No. 514, § 1; A.S.A. 1947, § 19-1828; Acts 1987, No. 811, § 1; 1991, No. 371, § 1; Acts 2009, No. 256, § 1; 2013, No. 41, § 12.

Amendments. The 2009 amendment

deleted (a)(2) and redesignated the following subdivision accordingly, and made related and minor stylistic changes.

The 2013 amendment rewrote the section heading and the section.

24-11-419. [Repealed.]

Publisher's Notes. This section, concerning credited service and purchase of military service by active police in cities of 75,000, was repealed by Acts 2013, No. 41,

§ 13, effective Feb. 6, 2013. The section was derived from Acts 1979, No. 712, §§ 1-3; 1981, No. 429, § 1; 1983, No. 653, § 1; A.S.A. 1947, §§ 19-1825 — 19-1827.

24-11-422. Benefits — Voluntary retirement.

(a)(1)(A) Any member of a police department who has performed faithful service for a period of at least twenty (20) years shall be eligible for voluntary retirement.

(B) Upon written application by the member, the board of trustees shall place him or her on the pension roll and he or she shall be entitled to receive from the fund a monthly pension equal to one-half (½) the actual salary based upon his or her highest salary year during his or her time of service.

(2)(A)(i) The term “salary” means regular salary only and does not include, except as otherwise provided in subdivision (a)(2)(A)(ii) of this section, overtime pay, payments for unused accrued sick or annual leave, or the cash value of any nonrecurring or unusual remuneration.

(ii)(a) The term “salary” may include the payments to a police officer for unused accrued sick leave not to exceed ninety (90) work days recorded on the records of the city or town as of the officer's date of retirement, provided the municipality agrees by ordinance to make adequate contributions to the fund to cover the additional costs for the benefits from the increased salary and the fund is judged by an actuarial determination to be actuarially sound.

(b) The board of trustees of the local fund shall determine the actuarial costs of the payments for the unused accrued sick leave to the fund.

(B) The overtime exclusion shall not apply to a benefit computed at any time on a salary year prior to June 28, 1985.

(b)(1)(A) Any police officer who has more than twenty (20) years of service at the time of retirement shall be entitled to receive the sum of twenty dollars (\$20.00) per month in addition to his or her regular retirement pay for each full year worked over and above twenty (20) years.

(B) In no instance shall he or she receive more than one hundred dollars (\$100) per month in addition to his or her regular benefit.

(2) The increase in benefit levels provided in this subsection for service beyond twenty (20) years shall apply only to those police officers who retire on or after January 1, 1987.

(3) If a deceased officer receives the benefit provided under this subsection at the time of his or her death, the benefit shall be included in the amount paid to a surviving spouse or surviving child under § 24-11-425(a)(1)(A)(ii).

(c)(1) Any member of a department of a city which is divided by a street state line from an incorporated city or town in an adjoining state who is eligible for voluntary retirement and who shall continue to work for the department may receive the sum of twenty dollars (\$20.00) per month upon retirement in addition to his or her regular monthly retirement pay for each continuous year that he or she shall work over and above his or her twenty (20) years.

(2) In no instance shall he or she receive more than three hundred dollars (\$300) per month in addition to his or her regular retirement pay.

History. Acts 1937, No. 250, § 9; Pope's Dig., § 9864; Acts 1945, No. 176, § 3; 1957, No. 415, § 2; 1963, No. 210, § 1; 1969, No. 288, § 1; 1971, No. 63, § 1; 1981, No. 987, § 1; 1985, No. 899, § 1; A.S.A. 1947, § 19-1809; Acts 1987, No. 325, § 3; 1987, No. 396, § 2; 1987, No. 797, § 2; 1989, No. 592, § 1; 1993, No. 546, § 1; 2011, No. 556, § 3; 2013, No. 41, § 14.

Amendments. The 2011 amendment added (b)(3).

The 2013 amendment substituted "roll and be entitled to receive from the fund a monthly pension equal to" for "roll at" in (a)(1)(B); in (a)(2)(A)(i), substituted "means" for "as used herein shall mean" and "does not" for "shall not"; and inserted "of the local fund" in (a)(2)(A)(ii)(b).

24-11-423. Benefits — Disability retirement.

(a)(1)(A) If any member of a police department becomes physically or mentally permanently disabled and this fact is certified by a physician named by the local board of trustees, he or she shall be entitled to retire and receive a pension as provided herein. A member of the police department shall not be retired for disability for natural causes unless he or she has served at least five (5) years.

(B) If the disabling injury or disease occurred while not actually performing work in gainful employment for the police department, the monthly benefit shall be equal to the benefit paid to normal service retirants.

(C)(i) If, however, a police officer is injured in the line of duty, the monthly disability benefit shall either be equal to sixty-five percent (65%) of the salary attached to the rank held by the member of the police department or shall be equal to the benefit paid to normal service retirants, whichever is greater.

(ii) For purposes of this section, "injured in the line of duty" means to have sustained a disabling injury or disease that occurs while the member of the police department is conducting official police department operations or training to become a police officer.

(iii) The local board of trustees shall determine whether the disability occurred in the line of duty and may require any medical evidence, official reports, expert testimony, or other information to be supplied by the applicant in addition to the required physician's

examination. The additional benefits provided in this subdivision (a)(1)(C) shall be effective for all qualifying applications first received by the local board of trustees on or after January 1, 1987.

(2) For purposes of computing all benefits under this section, the term "salary" means regular salary only and shall not include overtime pay, payments for unused accrued sick leave or annual leave, or the cash value of any nonrecurring or unusual remuneration.

(b) A police officer retired for reasons of disability who has more than twenty (20) years of service shall also be entitled to receive any supplementary benefit for which he or she would otherwise be qualified under this section and § 24-11-422.

(c)(1) If a member of the police department is retired because of any disability and, if he or she shall have recovered from the disability, and this fact is certified by a physician, it shall be the duty of the local board of trustees to stop the payment of the pension and to place the member back in service in the police department.

(2) The time of the member's retirement shall be considered as continuous service in the police department.

(d)(1) In addition to the examination under subsection (c) of this section, the local board of trustees may require the member of the police department to have an examination by a physician named by the local board of trustees no more often than once every six (6) months, and, if the physician determines that the member of the police department has recovered from the disability, it shall be the duty of the local board of trustees to stop the payment of the pension and to place the member back in service in the police department.

(2) The time of the member's retirement shall be considered as continuous service in the police department.

(3) The local board of trustees shall pay for the cost of the additional physician's examination.

History. Acts 1937, No. 250, §§ 7, 9, 10; Pope's Dig., §§ 9862, 9864, 9865; Acts 1941, No. 82, §§ 1, 2; 1945, No. 176, §§ 2, 3; 1957, No. 415, § 2; 1963, No. 210, § 1; 1969, No. 288, § 1; 1971, No. 63, § 1; 1981, No. 987, § 1; 1983, No. 552, §§ 1, 2; A.S.A. 1947, §§ 19-1807, 19-1809, 19-1810; Acts 1987, No. 325, §§ 2, 3; 2013, No. 41, § 15.

Amendments. The 2013 amendment

rewrote (a)(1)(A) and (a)(1)(C)(ii); substituted "local board of trustees" for "board" twice in (a)(1)(C)(iii); substituted "A police officer" for "Any police officer" in (b); rewrote (c)(1); in (c)(2), substituted "the member's" for "his or her" and inserted "police" preceding "department"; deleted (c)(1)(3); and rewrote (d)(1), (d)(2), and (d)(3).

24-11-425. Benefits — Death of active or retired member.

(a)(1)(A) If any active police officer or any retired member dies from any cause, leaving a surviving spouse, then the board of trustees shall direct a monthly pension during the surviving spouse's life in an amount equal to the lesser of the:

(i) Pension attached to the rank of the deceased police officer at the time of his or her death; or

(ii) Monthly pension amount being paid to the deceased police officer at the time of his or her death.

(B) In no event shall the benefit of the surviving spouse be less than three hundred fifty dollars (\$350) per month.

(2) If any active police officer or any retired member dies from any cause and leaves no surviving spouse but has a surviving child or children under the age of eighteen (18) who have not completed high school, then the board shall direct a monthly pension benefit to the surviving child or children under the age of eighteen (18) in an aggregate amount to the children equal to the pension attached to the rank of the deceased police officer at the time of his or her death, but in no event shall the benefits to the surviving children be less than three hundred fifty dollars (\$350) per month. However, if any child enrolls in an institution of higher learning after completing high school, then the payment shall continue as long as the child is a full-time student but not beyond the child's twenty-third birthday unless he or she is a dependent child who is physically or mentally permanently disabled.

(3)(A) The board may continue a benefit for life for a dependent child who is physically or mentally permanently disabled and this fact is certified to the board by a physician.

(B) The board may first require that a second evaluation be performed by another physician to be named by the board, and they shall review the child's disabled status from time to time, but at least every five (5) years.

(4)(A)(i) Beginning July 1, 2007, if a retired member dies from any cause and leaves a surviving former spouse who was receiving a portion of the retired member's retirement benefit and also leaves a surviving spouse entitled to benefits under subdivision (a)(1) of this section, then until the surviving former spouse or surviving spouse dies or remarries, the surviving former spouse shall continue to receive the same benefit he or she was receiving when the retired member died.

(ii) Upon the death or remarriage of the surviving former spouse, the monthly pension of the surviving spouse shall be increased to the pension attached to the rank of the deceased police officer at the time of his or her death.

(B) A surviving former spouse shall not be entitled to any benefit increases approved by the board for its members.

(b) If the police officer leaves no surviving spouse or children but does leave a dependent parent, the board shall pay the dependent parent the sum of one hundred twenty-five dollars (\$125) monthly as long as the dependent parent remains unmarried.

(c) The minimum benefit provided in this section shall be paid to all qualified survivors regardless of whether they were already receiving benefits or become eligible for the first time after June 17, 1981.

(d)(1) If any police officer marries after retirement, that surviving spouse may be entitled to a pension under this subchapter if he or she has been married to the police officer for a period of at least five (5)

years, if the board of trustees for the fund decides to extend this benefit for its members and if the pension fund will be actuarially sound as determined by the actuary for the Arkansas Fire and Police Pension Review Board after this benefit increase is extended to members.

(2) If any police officer who retired after June 12, 1964, and before June 20, 1964, marries after retirement, that surviving spouse shall be entitled to a pension under this subchapter if he or she has been married to the police officer for a period of at least two (2) years and if the actuarial soundness of the fund will not be adversely affected.

(e)(1) In addition to the monthly pension provided in subsections (a) and (b) of this section, the board shall order and direct the payment of the sum of one hundred twenty-five dollars (\$125) per month to each child under eighteen (18) years of age. However, the payment shall continue to each child over eighteen (18) years of age as long as the child is a full-time student but not beyond the child's twenty-third birthday unless he or she is a dependent child who is physically or mentally permanently disabled.

(2) The board may continue a benefit for life for a dependent child who is physically or mentally permanently disabled and this fact is certified to the board by a physician on the board. The board may first require that a second evaluation be performed by another physician to be named by the board, and it shall review the child's disabled status from time to time, but at least every five (5) years.

(f)(1) The sum total of the pension to be paid the surviving spouse or the qualifying child of the deceased police officer shall not exceed one-half ($\frac{1}{2}$) of the salary attached to the rank the police officer held at the time of his or her death or the monthly pension amount being paid to the deceased police officer at the time of his or death, whichever is greater.

(2) However, the limit on the sum total amount under subdivision (f)(1) of this section may be exceeded through benefit increases authorized under § 24-11-102.

(g)(1) If any surviving spouse, surviving former spouse, or child shall marry, he or she shall thereafter receive no further pension under this subchapter except that if he or she is a surviving spouse of a police officer who is killed while in the official performance of his or her duties, then any such surviving spouse's or former spouse's benefits shall continue.

(2) Benefits may be restored to a surviving spouse whose benefits had been terminated prior to or after August 1, 1997, upon his or her application to and approval by the board.

(h)(1) When entitled to a pension as provided by this subchapter, a surviving spouse, child, or dependent parent shall make application to the board through the secretary of the board on a form to be provided by the board.

(2) Accompanying the application shall be proof of the marriage of the decedent to the surviving spouse claimant.

(3) Proof of the birth of children shall be shown by the baptismal or board of health certificates.

(4) All applications and proof shall be retained in the custody of the board, and due notice of that action shall be registered by the secretary in his or her office.

(i) Every member of the department must file with the secretary the names of those persons to whom death benefits are to be paid and the relationship of the beneficiary to the decedent.

History. Acts 1937, No. 250, §§ 8, 13, 19; Pope's Dig., §§ 9863, 9868, 9874; Acts 1953, No. 86, § 2; 1965, No. 413, § 1; 1967, No. 127, § 1; 1981, No. 582, § 1; 1983, No. 44, § 1; 1985, No. 1027, § 1; A.S.A. 1947, §§ 19-1808, 19-1813, 19-1819; Acts 1987, No. 618, § 1; 1993, No. 1197, § 2; 1997, No. 1138, § 1; 1997, No. 1241, § 1; 1999, No. 978, § 1; 1999, No. 1458, §§ 1, 2; 2003, No. 674, § 1; 2007, No. 611, §§ 2, 3; 2009, No. 32, § 1; 2011, No. 556, § 4.

A.C.R.C. Notes. Acts 1997, No. 695, § 1, codified as § 24-10-617, provided: "(a) When a municipal employee who is vested in a municipal retirement system under the Arkansas Local Police and Fire Retirement System, § 24-10-101, et seq., or under a local police pension and relief fund, § 24-11-401, et seq., or under a fire pension and relief fund, § 24-11-801, et seq., is killed or dies in the course of his employment and is survived by a spouse, or has surviving dependents actively drawing a benefit from those municipal retirement systems, then the surviving spouse or surviving dependents may continue to participate in the municipality's health care plan as long as the surviving spouse or surviving dependents pay both employer and employee contributions to the health care plan.

"(b) Provided, however, a surviving spouse or surviving dependent may qualify to continue on the health care plan only so long as they remain an eligible beneficiaries under the retirement system."

Acts 2009, No. 32, § 2, provided: "Section 1 of this act shall be effective retroactively to July 1, 2007."

Publisher's Notes. Acts 1999, No. 1458, § 2 provided: "The provisions of this act shall apply retroactively to allow certain surviving spouses who lost benefits because of re-marriage to have those benefits restored if their member spouses were killed while in performance of his or her official duties before Act 1241 of 1997 became effective."

Amendments. The 2009 amendment inserted "Beginning July 1, 2007" in (a)(4)(A)(i), and made related changes.

The 2011 amendment, in (e)(1), deleted "who has not completed high school" following the first occurrence of "(18) years of age," and "if the child enrolls in an institution of higher learning after completing high school, then" following "However," and inserted "to each child over eighteen (18) years of age"; and added "or the monthly pension amount being paid to the deceased police officer at the time of his or death, whichever is greater" at the end of (f)(1).

24-11-426. Optional vesting rights policy.

(a)(1) Upon an actuarial determination that the policemen's pension and relief fund will remain actuarially sound, the board of trustees of a local policemen's pension and relief fund of cities of the first class shall have the option to establish a vesting rights policy in its policemen's pension and relief fund.

(2) The required actuarial valuation shall be made by the actuary employed by the Arkansas Fire and Police Pension Review Board, who shall then report the actuarial findings in writing to the board of trustees.

(3) All costs for the actuarial valuation shall be borne by the local funds.

(b)(1) If approved, the vesting policy shall provide that in the event a member with ten (10) years or more of credited service in the system ceases to be employed as a member of the department and does not withdraw his or her accumulated employee contributions to the system, the member shall be entitled to receive a pension upon reaching fifty-five (55) years of age and making application to the board of trustees.

(2) The pensions shall be computed at two and one-half percent (2.5%) of salary at the time of separation from the department, multiplied by the number of years of credited service, not to exceed twenty (20) years.

(c) Any member may elect to withdraw his or her accumulated contributions to the system at the time of separation from the department and to waive any pension rights the member may have earned in the system.

(d) This section shall not affect any other section of the policemen's pension and relief funds of cities of the first class.

History. Acts 1983, No. 646, § 1; A.S.A. 1947, § 19-1830; Acts 2013, No. 41, § 16.

Amendments. The 2013 amendment substituted "policemen's pension and relief fund" for "fund" in (a)(1); in (a)(2), substituted "valuation" for "evaluation"

and deleted "Arkansas Local Police and Fire Retirement System upon application to the Executive Director of the" preceding "Arkansas Fire"; and substituted "actuarial valuation" for "evaluations" in (a)(3).

24-11-430. Death benefit.

(a) When an active or retired police officer dies, the board of trustees shall pay from the fund a sum of not less than one hundred dollars (\$100) nor more than six thousand five hundred dollars (\$6,500) to pay the death benefits of the decedent to:

- (1) The surviving spouse of the police officer;
- (2) The police officer's estate if there is no surviving spouse; or
- (3)(A) A beneficiary chosen by the police officer if before death the police officer executed a beneficiary form.

(B) The board of trustees shall provide a beneficiary form to active and retired police officers.

(b) Each board of trustees shall adopt a policy establishing the amount to be paid for death benefits under this section, and the amount shall be awarded uniformly to all eligible persons.

(c) The board of trustees may change the amount of death benefits payable under this section, but in that instance the amount shall be uniformly distributed likewise.

History. Acts 1937, No. 250, § 18; Pope's Dig., § 9873; Acts 1981, No. 438, § 1; 1983, No. 10, §§ 1, 2; A.S.A. 1947, §§ 19-1818, 19-1818.1; Acts 1997, No. 1017, § 1; 2007, No. 611, § 4; 2007, No. 1571, § 1; 2013, No. 1206, § 1.

A.C.R.C. Notes. Pursuant to § 1-2-

207, this section is set out above as amended by Acts 2007, No. 1571, § 1. This section was also amended by Acts 2007, No. 611, § 4 to read as follows:

"Death benefit.

"(a) Whenever an active or retired police officer dies or is killed, the board of

trustees shall pay from the fund a sum of not less than one hundred dollars (\$100) nor more than four thousand dollars (\$4,000) to:

(1) The surviving spouse of the police officer; or

(2) The police officer's estate if there is no surviving spouse.

(b) Each board of trustees shall adopt a policy establishing the amount to be paid for death benefits pursuant to this section, and the amount shall be awarded uniformly to all eligible persons.

(c) The board of trustees may change the amount of death benefits payable under this section, but in that instance the amount shall be uniformly distributed likewise."

Amendments. The 2013 amendment substituted "death benefit" for "funeral expenses" in the section heading and throughout the section; in (a), substituted "When" for "Whenever" and "pay" for "appropriate" and inserted (a)(1) through (a)(3)(B).

24-11-433. Police pension funds — Partial disability pensions.

(a)(1) If a member of a police department of a city of the first class with a population in excess of one hundred seventy thousand (170,000) persons as determined by the 1990 population totals as published by the United States Census Bureau becomes physically or mentally permanently partially disabled and this fact is certified by a physician named by the local board of trustees, the member of the police department shall be entitled to retire and receive a pension as provided in this section.

(2) A member of the police department shall not be retired for disability for natural causes unless he or she has served at least five (5) years.

(b)(1) The physician's certification shall state whether the disability is total or partial.

(2) In the event such disability is partial, the physician shall state the extent of such partial disability, apportioned to the body as a whole, in percentage terms.

(3)(A) If the disability injury or disease occurred while not actually performing work in gainful employment for the police department and the physician certifies that such disability is total, the monthly benefit shall be equal to the benefit paid to normal service retirants.

(B) If the physician certifies that such disability is partial, the monthly benefits shall be equal to the benefit paid to normal service retirants multiplied by the percentage the member is disabled, as certified by the physician.

(4)(A) If, however, a police officer is injured in the line of duty and the physician certifies that such disability is total, the monthly disability benefit shall either be equal to sixty-five percent (65%) of the salary attached to the rank held by the member in the police department or shall be equal to the benefit paid to normal service retirants, whichever is greater.

(B) If the physician certifies that such disability is partial, the monthly benefit shall be equal to sixty-five percent (65%) of the salary attached to the rank held by the member in the police department or shall be equal to the benefit paid to normal service retirants, whichever is greater, multiplied by the percentage the member is disabled, as certified by the physician.

(c) The local board of trustees shall determine whether the disability occurred in the line of duty and may require any medical evidence, official reports, expert testimony, or other information to be supplied by the police officer in addition to the required physician's examination.

(d) The additional benefits provided in this section shall be effective for all qualifying applications first received by the local board of trustees on or after January 1, 1987.

(e) For purposes of this section, "injured in the line of duty" means to have sustained a disabling injury or disease while the member of the police department is conducting official police department operations or training to become a police officer.

History. Acts 1991, No. 1168, § 1; 2013, No. 41, § 17.

Amendments. The 2013 amendment deleted "member of the board" or "member" following "physician" throughout the section; rewrote (a)(1); substituted "A member of the police department shall

not" for "No member shall" in (a)(2); deleted former (b)(3) and redesignated the remaining subdivisions accordingly; in (c), substituted "local board of trustees" for "board" and "police officer" for "applicant"; substituted "local board of trustees" for "board" in (d); and rewrote (e).

24-11-434. Deferred retirement option plan.

(a)(1) In lieu of terminating employment and accepting a service retirement pension under this subchapter, a police officer who is a member of a policemen's pension and relief fund who has not less than twenty (20) years of credited service and who is eligible to receive a service retirement pension may elect to participate in the Arkansas Police Officers' Deferred Retirement Option Plan and defer the receipt of benefits in accordance with the provisions of this section, provided that the board of trustees of the local policemen's pension and relief fund approves the participation in the plan.

(2) For purposes of this section, credited service includes service credit recognized pursuant to this subchapter.

(b)(1) The duration of participation in the plan for active police officers shall not exceed five (5) years.

(2) The five-year limit may be extended if:

(A) The extension does not cause the limit to exceed ten (10) years;

(B) The extension applies to all active members and all members on the plan;

(C) The extension is approved by a majority of votes of the board of trustees of the pension and relief fund or of the Arkansas Local Police and Fire Retirement System for funds whose administrative responsibility has been assigned to the system as provided in § 24-11-406(b);

(D) The interest credited after the first five (5) years on the plan shall be two (2) percentage points below the rate of return of the investment portfolio of the fund and shall not be determined under subdivision (e)(2) of this section, but in no event shall the interest rate credited be less than zero percent (0%); and

(E) The extension is approved by a majority vote of the governing body of the sponsoring municipality.

(c)(1) Except under subdivisions (c)(2) and (3) of this section, at the conclusion of a member's participation in the plan, the member shall terminate employment with all participating municipalities as a police officer and shall start receiving the member's accrued monthly retirement benefit from the policemen's pension and relief fund.

(2) If a member is at the conclusion of a member's participation in the plan, the member may continue employment by a municipality under the following conditions:

(A) The municipality makes continued employment available to all similarly situated members;

(B) The availability of continued employment is approved by a majority vote of the governing body of the sponsoring municipality after receiving approval for an increase in benefits under § 24-11-102;

(C) The monthly benefit that is credited to the member's plan account is discontinued and the member shall not receive a monthly benefit until the member actually ceases employment;

(D) The interest rate credited to the plan account is the same paid as under subdivision (e)(2) of this section, except that the minimum rate is zero percent (0%);

(E) The employer's matching contribution of six percent (6%) shall cease, but all other employer contributions shall continue and be credited to the pension and relief fund; and

(F) The employee contributions of six percent (6%) shall discontinue.

(3)(A) A member may enter into employment with a participating municipality so long as the member has a break of service from his or her previous employment of at least thirty (30) days as a police officer, begins employment in a law enforcement position, and becomes a member of the Arkansas Local Police and Fire Retirement System.

(B)(i) Subdivision (c)(3)(A) of this section applies to a member of a local police pension and relief fund after the break in service regardless of the original date of hire of the member by a municipality that participates in the Arkansas Local Police and Fire Retirement System.

(ii) Retroactive application applies only if the member and employer contributions have been made under this chapter.

(d)(1) When a member begins participation in the plan, the contribution of the police officer and the employer contribution shall continue to be paid.

(2)(A) In a municipality having a population of over twenty thousand (20,000) persons, municipal matching contributions for employees who elect the plan shall be credited equally to the policemen's pension and relief fund and to the plan, or at the option of the local pension and relief fund board of trustees, credited in the manner provided in subdivision (d)(2)(B) of this section.

(B) In a municipality having a population of twenty thousand (20,000) persons or less, municipal matching contributions for employees who elect the plan shall be credited in full to the policemen's pension and relief fund, and the contribution of the employee shall be credited to the member's plan account.

(3) The monthly retirement benefits that would have been payable had the member elected to cease employment and receive service retirement and pension supplement payments made by the Arkansas Policemen's Pension Supplement Program shall be paid into the plan account.

(e)(1) The member's monthly retirement benefit shall not change unless the plan receives a benefit increase.

(2)(A) A member who participates in this plan shall earn interest at a rate of two (2) percentage points below the rate of return of the investment portfolio of the policemen's pension and relief fund as certified by the actuary under contract with the Arkansas Fire and Police Pension Review Board in accordance with generally accepted actuarial practices and § 24-11-207, but no less than the actuarial assumed interest rate as certified by the actuary.

(B) The interest shall be credited to the individual account balance of the member on an annual basis.

(f)(1) At the option of the participant, a participant in the plan shall receive a lump-sum payment from the account equal to the payments to the account or a true annuity based upon the account of the participant or may elect any other method of payment if approved by the board of trustees.

(2) If approved by a majority vote of the governing body of the sponsoring municipality and the board of trustees, a participant in the deferred retirement option plan may defer receiving payment of the participant's account and continue with the funds deposited into the plan.

(3)(A) Interest credited to the continuing deposit of funds in the plan under subdivision (f)(2) of this section shall be calculated in the same manner as interest under subdivision (e)(2) of this section.

(B) However, the minimum interest rate shall not be less than zero percent (0%).

(4) The payment of funds accumulated while participating in the deferred retirement option plan may be deferred only one (1) time. These funds must be distributed or annuitized by December 31 of the year a member attains age seventy and one-half (70 ½).

(g) If the participant dies during the period of participation in the plan, a lump-sum payment equal to the account balance of the participant shall be paid.

(h) A participant in the plan shall not receive any benefits under the plan unless he or she participates in the plan for a minimum of one (1) year, absent death or disability.

(i) The Arkansas Fire and Police Pension Review Board may promulgate regulations to make the plan under this section comply with the

requirements of this section and with the applicable portions of the Internal Revenue Code, as it existed on January 1, 2003.

(j) Although the police officer may remain employed by the participating municipality, any member who opts to participate in the plan shall be considered to be retired for all retirement purposes, including, but not limited to, benefit increase purposes and the extension of benefits to the spouses of deceased members.

History. Acts 1993, No. 757, § 1; 1995, No. 961, § 1; 1997, No. 492, § 1; 1999, No. 670, § 3; 1999, No. 1457, § 1; 1999, No. 1459, § 1; 2001, No. 1543, § 5; 2003, No. 1371, §§ 1, 2; 2003, No. 1372, §§ 1, 2; 2005, No. 258, § 1; 2007, No. 1572, § 1; 2013, No. 41, § 18; 2013, No. 1102, § 1.

Amendments. The 2013 amendment by No. 41, in (a)(1), substituted “a police officer” for “any police officer” and “Deferred Retirement” for “Deferred”; and substituted “includes” for “shall include” in (a)(2).

The 2013 amendment by No. 1102 re-designated (c)(3) as (c)(3)(A); in (c)(3)(A),

deleted “other than the municipality he or she was employed by at the time of retirement” following “participating municipality,” substituted “employment” for “employer,” and inserted “as a police officer, begins employment in a law enforcement position, and becomes a member of the Arkansas Local Police and Fire Retirement System”; and added (c)(3)(B)(i) and (c)(3)(B)(ii).

U.S. Code. The Internal Revenue Code, referred to (i), is codified as 26 U.S.C.S. § 1 et seq.

CASE NOTES

Marital Property.

Husband’s monthly retirement benefits were not paid directly to him, but were deposited into a Deferred Retirement Option Plan account under this section, and, pursuant to the parties’ property settle-

ment agreement, the wife was entitled to receive half of the deposits that accumulated throughout the husband’s employment. *Evans v. Evans*, 2009 Ark. App. 626, — S.W.3d — (2009).

24-11-435. [Repealed.]

Publisher’s Notes. This section, concerning buy-out option, was repealed by Acts 2013, No. 41, § 19, effective Feb. 6,

2013. The section was derived from Acts 1995, No. 1012, § 1.

24-11-436. Military service.

(a) If a member of a police pension and relief fund who while an employee enters the armed forces of the United States during any period of compulsory or voluntary military service, the service shall be credited under this subchapter.

(b)(1) In any case of doubt as to the period of armed service to be so credited a member under this section, the board of trustees of the pension fund shall determine the period.

(2) Except for service credited under subsection (d) of this section, a member of a police pension and relief fund shall not be credited with a total of more than five (5) years of armed service.

(c) During the period of armed service and until the member’s return as an employee, his or her contributions to the pension fund shall be

suspended, and any balance remaining to the member's credit in the pension fund shall be accumulated at regular interest.

(d)(1)(A) Under the requirements of section 4312 of the Uniformed Services Employment and Reemployment Rights Act of 1994, Pub. L. No. 103-353, in effect October 13, 1996, a member who leaves covered employment to serve in the uniformed services of the United States after giving notice to the employer and who returns to employment shall be treated as not having incurred a break in service with the employer.

(B) The employer shall certify to the pension fund that reemployment was in accordance with section 4312 of the Uniformed Services Employment and Reemployment Rights Act of 1994, Pub. L. No. 103-353 as in effect October 13, 1996.

(2) Under this subsection, the uniformed services of the United States are limited to the armed forces of the United States, the Army and Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty, the commissioned corps of the United States Public Health Service, and any other category of persons designated by the President of the United States in time of war or national emergency.

(3) The cumulative length of the absence from a position of employment with the employer by reason of service in the uniformed services for which service credit shall be given shall not exceed five (5) years.

(4) A member of a police pension and relief fund whose uniformed service is honorably terminated and who reports for reemployment under this subsection within the time provided in section 4312 of the Uniformed Services Employment and Reemployment Rights Act of 1994, Pub. L. No. 103-353, shall be entitled to accrue benefits for the time he or she served in the uniformed services by paying the employee contributions required by § 24-11-413, if any, within the time provided in section 4312 of the Uniformed Services Employment and Reemployment Rights Act of 1994, Pub. L. No. 103-353, and by repaying any amount he or she may have previously withdrawn from the pension fund, with interest.

(5)(A) An employer reemploying a member of a police pension and relief fund under this subsection shall pay to the pension fund the employer contributions due for the time he or she served in the uniformed services as required under § 24-11-413.

(B) However, if a member of a police pension and relief fund does not pay the employee contributions due, then no employer contributions are due.

(6) For the purposes of determining the employee and employer contributions due, the compensation for a member of a police pension and relief fund during the period of service in the uniformed services shall be computed at:

(A) The rate he or she would have received if the member of a police pension and relief fund had not served in the uniformed services; or

(B) The average compensation level for the member of a police pension and relief fund during the twelve-month period, or shorter if applicable, immediately preceding the service.

(7) Unless both employee and employer contributions are paid, the member of a police pension and relief fund shall not be entitled to any accrued benefits for the time served in the uniformed services.

(8)(A) If a member dies on or after January 1, 2007, while performing USERRA-qualified military service, he or she shall be treated as though he or she resumed covered employment on the day before the day of death.

(B) For a member of a police pension and relief fund who had not attained a vested status in the pension fund, sufficient service credit shall accrue to permit him or her to become vested.

(C) For a member of a police pension and relief fund who had attained a vested status, additional service credit accrual shall not occur.

(D) In all cases, the eligible benefit awarded by the pension fund under this section shall be a nonduty death benefit.

History. Acts 1995, No. 1290, § 1; deleted "Credit for" at the beginning of the 2013, No. 41, § 20. section heading, and rewrote the section.

Amendments. The 2013 amendment

24-11-437. Credited service — Purchase of former law enforcement service.

(a) If the local board of trustees for a policemen's pension and relief fund decides to extend this benefit for its members and if the pension fund will be actuarially sound as determined by the actuary for the Arkansas Fire and Police Pension Review Board after this benefit increase is extended to members, any member of the policemen's pension and relief fund as established by this subchapter shall be entitled to purchase credited service in the system, not to exceed five (5) years, for service rendered by the member as a law enforcement officer in this state prior to the member's employment covered by the policemen's pension and relief fund.

(b) The member may purchase the credited service if:

(1) The member is an active member with at least twenty (20) years' actual service in the policemen's pension and relief fund and contributes to the pension fund an amount that is the actuarial equivalent of the value of the credited service to be purchased; and

(2) The actuarial equivalent is of the time of the purchase of the credited service and shall be determined by the actuary for the Arkansas Fire and Police Pension Review Board, or for a pension fund under administration of the Arkansas Local Police and Fire Retirement System by the actuary for that system.

(c) Service that is or will be eligible for benefit payment from another plan shall not be eligible for purchase under the pension fund.

(d) The board of trustees of the pension fund shall make the final determination as to the:

- (1) Length of purchased service credit;

(2) Amount of regular interest to be charged; and

(3) Manner in which payment is made to the pension fund.
- (e) Service credit purchased under this section shall be used to determine the member’s total credited service under the pension fund but shall not be used to determine his or her final average pay under the pension fund.

History. Acts 1999, No. 903, § 1; 2013, No. 41, § 21.

Amendments. The 2013 amendment,

in (a), substituted “local board” for “board” and “five (5) years” for “two (2) years”; rewrote (b) through (d); and added (e).

24-11-438. Police-related service.

- (a) Any member of a policemen’s pension and relief fund who has police-related service with the municipal government shall be entitled to purchase credited service in the system equivalent to the amount of employment service he or she has with the municipal police department in a position as police-related employment service up to a maximum of three (3) years of credited service, provided that the member contributes to the system an amount the Arkansas Fire and Police Pension Review Board determines would be actuarially equivalent to the value of the service purchased.
- (b) The board shall have the final power to determine the value of the service purchased.
- (c) Service credit purchased under this section may be used to determine the member’s total credited service for the amount upon retirement and shall not be used to determine his or her final average pay for service under the system.
- (d) As used in this section, “police-related service” means service with a municipality that has police officers covered under a policemen’s pension and relief fund in a job or in a paid position within a covered police department or fire department where the person performs duties that are related to the delivery of police and law enforcement services, including service such as a police department radio dispatcher or other similar service.

History. Acts 1999, No. 1171, § 1.

Publisher’s Notes. This section is be-

ing set out to reflect a correction in sub-section (a).

SUBCHAPTER 8 — FIREMEN’S RELIEF AND PENSION FUNDS

SECTION.	SECTION.
24-11-801. Board of trustees — Members.	24-11-805. Investment.
24-11-802. Board of trustees — Proceedings.	24-11-806. Payments generally.
24-11-803. Board of trustees — Powers.	24-11-807. Minimum payments generally — Proration upon insufficiency of fund — Supplemental pensions.
24-11-804. Administration of small funds by Arkansas Local Police and Fire Retirement System.	24-11-809. Apportionment of insurance premium tax generally.

SECTION.

- 24-11-810. [Repealed.]
- 24-11-812. Tax levy by city council.
- 24-11-813. Clerk's report to pension review board.
- 24-11-814. Subjection of fund to legal process.
- 24-11-817. Military service.
- 24-11-818. Benefits — Voluntary retirement.
- 24-11-819. Benefits — Disability retirement.
- 24-11-820. Benefits — Death of active or retired member other than while employed outside department.
- 24-11-821. [Repealed.]
- 24-11-823. Increase in benefits for certain persons retired due to total permanent disability.

SECTION.

- 24-11-824. Fire protection districts.
- 24-11-825. Pensions for volunteer firefighters.
- 24-11-826. Additional benefits for certain firefighters hired prior to January 1, 1983.
- 24-11-827. Retired member returning to active status.
- 24-11-829. Increase in surviving spouse benefits.
- 24-11-830. Deferred retirement option plan.
- 24-11-831. [Repealed.]
- 24-11-832. Applicability of § 24-11-820.
- 24-11-833. Fire-related service.
- 24-11-834. Former military service credit purchase.

Effective Dates. Acts 2003, No. 1473, § 74: July 1, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act includes technical corrects to Act 923 of 2003 which establishes the classification and compensation levels of state employees covered by the provisions of the Uniform Classification and Compensation Act; that Act 923 of 2003 will become effective on July 1, 2003; and that to avoid confusion this act must also be effective on July 1, 2003. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2003."

Acts 2003, No. 1797, § 7: Apr. 23, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that premium tax distribution formula is directing state revenues to areas without the need for priority fire and police protection; that police and fire protection services are of extreme importance in the protection of property values and individual lives; that the distribution of premium tax revenues to the areas of the highest need is a top priority; that implementation of a revised distribution formula must be implemented before the normal time for the effectiveness of other laws; and that this act needs to be immediately effective to fulfill that priority. Therefore, an emergency is declared to

exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2007, No. 614, § 2: Mar. 28, 2007. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that surviving spouses of firefighters killed while on duty lose retirement benefits upon any remarriage and should be able to have retirement benefits restored, upon application to their fund's board of trustees, and also be eligible for benefit increases granted during the interim between their benefit termination and restoration, subject to the board of trustees' discretion; and that this act is immediately necessary for the protection of these surviving spouses of firefighters. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may

veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2009, No. 1201, § 9: Apr. 7, 2009. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the statutes relating to payments from the local pension and relief funds need amending in order for the investments of the assets in the local pension and relief funds to be consistent with the practicalities of the market. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2009, No. 1480, § 117: Apr. 10, 2009. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act makes various revisions to Arkansas election laws that are designed to improve the administration of elections and special elections and that these revisions should be implemented as soon as possible so that the citizens of this state may benefit from improved election procedures. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or

(3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2011, No. 556, § 6: Mar. 22, 2011. Emergency clause provided: “It is found and determined by the General Assembly that the Arkansas Fire and Police Pension Review Board is in place to provide economic security for eligible citizens of Arkansas, that the statutes need amending to account for changes in the economy, and that these citizens need to be immediately covered by these changes. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2013, No. 41, § 37: Feb. 6, 2013. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the local police and fire retirement systems provide economic security for eligible citizens of Arkansas; that the statutes need amending to update and clarify existing law; and that these changes need to be made immediately. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

24-11-801. Board of trustees — Members.

(a) The board of trustees of every firemen’s pension and relief fund established in a city, incorporated town, or duly qualified fire protection district under this subchapter shall be composed of the following:

- (1) The chief executive, who shall serve as chair of the board;
- (2) The city or district clerk or recorder, who shall serve as secretary of the board;

(3) The fire chief or, if the fire chief is not a member of the fund, the highest ranking member of the fire department who is a member and who is willing to serve; and

(4)(A) Four (4) active or retired members of the pension fund.

(B) As used in this section, "member" includes an active or retired member of the fund but does not include a beneficiary of the fund.

(b) The board thus created shall provide for the disbursement of the firemen's relief and pension fund and shall designate its beneficiaries as directed in this act.

(c) The active and retired members shall elect the member trustees by secret written ballot in May of each year by a method to be determined by the board.

(d) All member trustees shall serve two-year terms without compensation.

(e) The board may make all rules needful for its guidance to implement the provisions regarding board composition.

(f) The chief executive in the cities, incorporated towns, or fire protection districts shall be the chair, the city or town clerk or recorder or clerk of the fire protection district shall be ex officio secretary, and the city, town, or fire protection district treasurer shall be ex officio treasurer of the board of trustees during his or her respective term of office as the official of the city, incorporated town, or fire protection district.

(g) The secretary and treasurer of each board of trustees shall report annually, at the same time annual reports are required as clerk, recorder, or treasurer, the precise status of the firemen's relief and pension fund, showing all receipts and disbursements on account with a full and complete list of all beneficiaries of the fund and the amount paid each beneficiary.

(h)(1) Each member of the board of trustees of the firemen's pension and relief fund who receives gifts or other compensation that in total exceeds one hundred dollars (\$100), including, but not limited to, trips and meals, from current or potential investment advisors or managers of the firemen's pension and relief fund shall prepare an annual statement listing:

(A) Each item received;

(B) The estimated value of each item; and

(C) From whom each item was received.

(2)(A) Each member of the board of trustees of the firemen's pension and relief fund shall attest by written affidavit that the member's annual statement is true and current to the best of his or her knowledge.

(B)(i) An annual statement and affidavit from each board member shall be collected by the board of trustees of the firemen's pension and relief fund or the municipal treasurer.

(ii) One (1) copy of the statement and affidavit shall be filed with the Secretary of State.

(iii) A second copy of each statement and affidavit shall be retained on file by the board of trustees of the firemen's pension and relief fund

or the municipal treasurer and shall be available for review by any plan participant.

(C)(i) As part of the annual report to the Arkansas Fire and Police Pension Review Board, the chair of the board of trustees of the firemen's pension and relief fund for each plan shall certify that the statements and affidavits as described in this subsection have been completed and appropriately filed.

(ii) Each plan's annual report shall not be considered complete without this certification.

History. Acts 1921, No. 491, §§ 1, 2; Pope's Dig., §§ 7737, 7738; Acts 1943, No. 167, § 1; 1957, No. 326, §§ 1, 2; 1968 (1st Ex. Sess.), No. 24, §§ 1, 2; 1985, No. 927, § 2; A.S.A. 1947, §§ 19-2201, 19-2202; Acts 1987, No. 405, § 1; 1989, No. 527, § 1; 1991, No. 770, § 1; 2005, No. 2094, § 4; 2009, No. 260, § 2; 2011, No. 556, § 5; 2013, No. 1134, § 4.

Amendments. The 2009 amendment inserted "that in total exceed one hundred dollars (\$100)" in (j)(1).

The 2011 amendment added (a)(4)(B); deleted former (c) and (f) and redesignated the remaining subsections accordingly; in (c), inserted "active and," substituted "member trustees" for "retired member or members," and deleted "with the member or members to be chosen in alternate years" following "each year"; and added "without compensation" at the end of (d).

The 2013 amendment rewrote (a)(4)(B).

24-11-802. Board of trustees — Proceedings.

(a) Meetings of the board of trustees may be called by the chair or by a majority of the members in a manner established by the board.

(b) The board shall issue orders signed by the chair and secretary to the persons entitled thereto for the amount of money ordered paid to the persons from the fund by the board. The order shall state for what purpose the payment is made.

(c) The board shall keep a record of its proceedings. The record shall be a public record.

(d)(1) At each meeting, the board shall send to the treasurer of the city or town a written or printed list of all persons entitled to payment from the fund provided for in this subchapter.

(2) This list shall state the amount of the payment and for what granted and shall be certified to and signed by the chair and secretary of the board and attested under oath.

(e)(1) The treasurer of the city or town shall thereupon enter a copy of the list upon the book to be kept for that purpose. The book shall be known as "The Firemen's Relief and Pension Fund Book".

(2) The board shall direct payment of the amounts named therein to the persons entitled thereto out of those funds.

(f) A majority of all the members of the board shall constitute a quorum and shall have the power to transact business.

(g)(1) Money belonging to the fund shall not be disbursed for any purpose without a vote of a majority of all the members of the board of trustees, which shall be taken by the "yeas" and "nays".

(2) The vote of each member so voting shall be entered upon the proceedings of the board.

History. Acts 1921, No. 491, § 3; Pope's Dig., § 7739; Acts 1981, No. 57, § 1; A.S.A. 1947, § 19-2203; Acts 1993, No. 201, § 1; 1995, No. 514, §§ 4-6; 2013, No. 41, § 22.

Amendments. The 2013 amendment substituted "chair" for "president" in the first sentence of (b) and in (d)(2); and in (g)(1), deleted "No" at the beginning and substituted "shall not" for "shall ever."

24-11-803. Board of trustees — Powers.

(a) In addition to the other powers granted in this subchapter, the board of trustees shall have the power to:

(1)(A) Compel witnesses to attend and testify before it upon all matters connected with the operation of this act and in the same manner as provided by law for the taking of testimony before a notary public.

(B) The chair or any member of the board may administer oaths to the witnesses;

(2)(A) Provide for the payment from the fund of all its necessary expenses.

(B) However, no compensation shall be paid to any member of the board for any duties performed under this act; and

(3) Make all rules needful for compliance with the provisions of this act.

(b) The board shall have the power to accept and disburse according to the provisions of this act any and all sums which may come into its hands through appropriation, gift, or devise.

(c) Members of the board of trustees of the firemen's relief and pension fund of incorporated cities and towns in Arkansas shall have the power, in their discretion, to expend moneys from the firemen's relief and pension fund for the purpose of paying premiums and purchasing group insurance covering the members of the fire departments of the cities and towns against accidental injury or death occurring within the line of duty of the firefighters.

History. Acts 1921, No. 491, §§ 11, 14; Pope's Dig., §§ 7747, 7750; Acts 1947, No. 187, § 1; A.S.A. 1947, §§ 19-2211, 19-2222, 19-2229; Acts 2013, No. 41, § 23.

Amendments. The 2013 amendment substituted "The chair" for "Its president"

in (a)(1)(B); deleted "and printing" at the end of (a)(2)(A); deleted "or emoluments" following "compensation" in (a)(2)(B); and in (a)(3), deleted "and regulations" following "rules" and substituted "compliance" for "its guidance in conformity."

24-11-804. Administration of small funds by Arkansas Local Police and Fire Retirement System.

(a)(1) In those local fire pension and relief funds that cover fewer than five (5) members, a local board of trustees may no longer exist, and the fund shall be designated as inactive by the employer.

(2) As used in this section, "member" includes an active member or a retired member of the fund described in subdivision (a)(1) of this section but does not include beneficiaries.

(b) Administrative responsibility for the fund shall be assigned to the Arkansas Local Police and Fire Retirement System as allowed by §§ 24-10-301 and 24-10-302 and as provided in the following procedure:

(1)(A) The actuary under contract to the system shall compute the retirement reserve for vested and active members and for eligible beneficiaries of the inactive fund. After receiving the report of the actuary, the employer shall transfer the computed reserve to the system to be held in an account designed as the retirement reserve for the inactive fund and from which the system shall pay eligible beneficiaries.

(B) The retirement reserve and any additional employer contributions shall include such amounts as are necessary to provide administrative expenses for the system, but such expenses shall not exceed a total of one-half of one percent (0.5%) of active member payroll plus one percent (1%) of annual reserve assets.

(2) Any excess assets of the fund remaining after the retirement reserve is created shall be transferred to an account designated by the employer, to be used solely for the purpose of making payments to the system for employee coverage administered under the system, and for no other purpose.

(3)(A) If a former member of the local pension fund returns to service in which the employee would have again become a member of the local fund, the past service credit may be purchased by the employer for the employee under the system and the purchase costs shall be amortized in the same manner as other service credit purchases are amortized under the system.

(B) Retired members and beneficiaries of any inactive fund under administration of the system that was actuarially sound before being designated inactive shall be eligible for annual redetermination of benefits as defined in § 24-10-612.

(C) Should the law mandate an increase in benefits to retired members or their beneficiaries, the increases shall be payable from the retirement reserve of the inactive fund.

(D) No prorating of benefits shall be allowed in inactive funds under the administration of the system.

(E) If the retirement reserve of an inactive fund shall become inadequate to pay full benefits to eligible recipients or if active members are still covered by the fund, the system shall require of the employer and the employer shall remit such actuarially computed amounts as are necessary to pay full benefits to current and future recipients.

(4)(A) Once a fund becomes inactive and a retirement reserve is created as required by this section, the employer may continue to collect such millages, state insurance tax turnback, and other revenues allowed by law for the support of firefighter retirement programs.

(B) The revenues shall be deposited locally in an account designated by the employer solely for making payments to the system for

employee coverage administered under the system, and for no other purpose.

(5)(A) All employer contributions for inactive funds shall be made in such amounts and in such manner, form, and frequency as the Board of Trustees of the Arkansas Local Police and Fire Retirement System shall require.

(B) The pension records of inactive funds and other materials and reports as may be required by the board to administer the inactive funds shall be provided to the system in such manner as the board shall require.

History. Acts 1921, No. 491, § 1; Pope's Dig., § 7737; Acts 1985, No. 927, § 2; A.S.A. 1947, § 19-2201; Acts 1987, No. 405, § 1; 2007, No. 1056, §§ 3, 4; 2009, No. 255, § 1.

Amendments. The 2009 amendment substituted "fire" for "police" in (a)(1).

24-11-805. Investment.

(a)(1) All moneys provided for the fund by this act shall be paid over to and received by the treasurer of the city or town for the sole use and benefit of the firemen's relief and pension fund, and the fund shall be used for no other purpose.

(2) The additional duties imposed upon the treasurer shall be and comprise additional duties for which he or she shall be liable under his or her oath and bond as the city or town treasurer.

(b) The board of trustees shall have the power with the consent of a majority of the firefighters at the time employed, expressed in writing and filed with the city clerk, to authorize the treasurer to draw sums from its treasury to invest in the name of the board of trustees of the firemen's relief and pension fund in interest-bearing bonds of the United States, of the State of Arkansas, or of the city where the board is located, in a local government joint investment trust pursuant to the Local Government Joint Investment Trust Act, § 19-8-301 et seq., the Arkansas Local Police and Fire Retirement System, in certificates of deposit or time deposits in banks duly established and authorized to do business in this state, or in savings and loan associations duly established and authorized to do business in this state.

(c) Except as provided in subsection (d) of this section, all securities shall be deposited with the treasurer of the board of trustees of the relief and pension fund and shall be subject to the orders of the board.

(d)(1) However, in those pension and relief funds in which assets exceed one hundred thousand dollars (\$100,000), the board of trustees may employ:

(A) An investment advisor as defined in § 24-10-402(a)(2)(A)(ii) to invest the assets, subject to the terms, conditions, limitations, and restrictions imposed by law upon the system, as provided by § 24-10-401 et seq.; and

(B) A trustee or custodian to hold the assets.

(2) Investments shall not be limited to interest-bearing bonds, certificates of deposit, and time deposits.

(3) The total amount of fees paid for investment advisors, investment advisory services, investment educational services, trustee services, custodial and administrative services, and investment management services when the managers are required to perform security trades on a best execution basis shall be:

(A) Limited to no more than three percent (3%) annually of the first five hundred thousand dollars (\$500,000) of plan assets, plus no more than two percent (2%) annually of the next five hundred thousand dollars (\$500,000) of plan assets, plus no more than one percent (1%) annually of plan assets over one million dollars (\$1,000,000); and

(B) Clearly stated, in total, on all monthly, quarterly, and annual statements prepared for the board of trustees of the pension and relief fund.

History. Acts 1921, No. 491, § 15; Pope's Dig., § 7751; Acts 1939, No. 84, § 1; 1957, No. 121, § 2; 1967, No. 156, § 1; 1985, No. 6, § 3; 1985, No. 16, § 3; A.S.A. 1947, § 19-2223; Acts 1989, No. 152, § 4; 1995, No. 615, § 3; 1999, No. 901, § 2; 2005, No. 2094, § 2; 2009, No. 1201, §§ 4, 5.

Amendments. The 2009 amendment inserted "Except as provided in subsection (d) of this section" in (c); inserted (d)(1)(B) and redesignated the existing text of (d)(1) accordingly; and made related changes.

24-11-806. Payments generally.

(a) Except as provided in subsection (b) of this section, payments provided for in this act shall be made monthly upon proper vouchers and in such manner as provided for in other disbursements of the city or town.

(b) In a firemen's relief and pension fund in which the board of trustees of the firemen's relief and pension fund has employed a trustee or custodian under § 24-11-805(d) to hold the assets, the trustee or custodian may pay benefits to persons and beneficiaries entitled to benefits under the fund as directed by the board.

History. Acts 1921, No. 491, § 17; Pope's Dig., § 7753; A.S.A. 1947, § 19-2225; Acts 2009, No. 1201, § 6.

inserted (b) and redesignated the existing text accordingly; inserted "Except as provided in subsection (b) of this section" in (a); and made related changes.

Amendments. The 2009 amendment

24-11-807. Minimum payments generally — Proration upon insufficiency of fund — Supplemental pensions.

(a) For volunteer firefighters, in no case shall the payment to any retired member be less than one hundred dollars (\$100) per month, and the payment shall be made in accordance with the justice and equity of each case as determined by the board of trustees of the firemen's relief and pension fund.

(b) Should the fund provided for in this subchapter be insufficient to make full payment of the amount of pensions to all persons entitled thereto, then the fund shall be prorated among those entitled by the proper authorities as may be deemed just and equitable.

(c) The payment provided for in this section shall not be made until after the payment in full of all claims or demands against the fund arising or accruing under the provisions of § 24-11-819(c).

(d) For the purpose of determining how to prorate benefits, the proration shall be considered just and equitable if:

(1) The board of trustees pays the full minimum benefit each month to all eligible beneficiaries until assets in the fund are depleted for the fiscal year, at which time all payments shall cease until revenues are received for the next fiscal year; or

(2) The board of trustees decreases all payments to all eligible beneficiaries by an equal proportion for the fiscal year and does not allow the assets in the fund to become fully depleted.

(e) In cities having a population of twenty thousand (20,000) or more, if the board of trustees of the firemen's relief and pension fund shall determine that the balances in the fund together with estimated income thereto will provide an amount sufficient to pay additional minimum pensions to volunteer firefighters entitled to the pensions. Then, by adoption of a resolution by majority vote of the full membership of the board of trustees, the board of trustees may provide for the payment of supplemental, additional minimum pensions in an amount not to exceed twenty-five dollars (\$25.00) per month per retired volunteer firefighter, or such lesser amount as the board of trustees shall determine can be paid from fund balances and estimated income without jeopardizing or reducing other benefits payable from the fund.

History. Acts 1921, No. 491, § 20; A.S.A. 1947, § 19-2227; Acts 1993, No. Pope's Dig., § 7756; Acts 1963, No. 524, § 1; 1971, No. 64, § 1; 1985, No. 338, § 1; 1197, § 5; 2003, No. 1370, § 1.

24-11-809. Apportionment of insurance premium tax generally.

(a)(1) There is apportioned and set aside for the use and benefit of duly constituted firemen's relief and pension funds and for the administrative and actuarial expenses of the Arkansas Fire and Police Pension Review Board the annual taxes of two and one-half percent (2.5%) on all foreign and alien premiums collected by all property and casualty insurance companies, corporations, or associations incorporated under the laws of any state or nation and doing business in the State of Arkansas after all cancellations and dividends to policyholders are deducted as provided by §§ 23-60-102, 24-11-809, 26-57-601 — 26-57-605, and 26-57-607 upon real and personal property insured against the perils of fire and extended coverage, tornado, windstorm, cyclone, and hail, except upon growing crops, and located in or at cities, towns, and fire protection districts in the State of Arkansas coming within the provisions of this act.

(2) The premium taxes collected in this subsection shall be placed in a fund combined with the premium taxes collected pursuant to § 24-11-301. The combined fund shall be entitled the "Firemen's and Police Officers' Pension and Relief Fund".

(b) In the case of multiperil policies with a single premium for both the property and casualty coverages, the portion of the taxable premium shall be as follows:

(1) In the case of commercial multiperil policies, seventy percent (70%);

(2) In the case of homeowners' policies, forty-five percent (45%);

(3) In the case of automobile physical damage policies, nine percent (9%); and

(4) In the case of inland marine policies, fifteen percent (15%).

(c) All additional revenues collected as a result of the levy of the insurance premium tax on domestic insurers, other than for premiums or copayments for life, disability, legal, wet marine, and foreign trade, and health maintenance organization insurance or contracts shall be special revenues and shall be apportioned and remitted to the Firemen's and Police Officers' Pension and Relief Fund.

History. Acts 1921, No. 491, § 12; Pope's Dig., § 7748; Acts 1949, No. 488, § 1; 1965, No. 431, § 3; 1968 (1st Ex. Sess.), No. 24, § 4; 1981, No. 595, § 2; 1985, No. 754, § 1; 1985, No. 992, § 4; A.S.A. 1947, § 19-2212; Acts 1995, No. 1266, § 6; 1997, No. 119, § 2; 1997, No. 1077, § 1; 1999, No. 1570, § 3; 2001, No. 1540, § 2; 2001, No. 1543, § 6; 2001, No. 1701, § 5; 2003, No. 1473, § 62; 2003, No. 1797, § 3; 2013, No. 41, § 24.

A.C.R.C. Notes. Pursuant to Acts 2003, No. 1473, § 72, the amendment of this section by Acts 2003, No. 1797, § 3, supercedes the amendment of this section by Acts 2003, No. 1473, § 62.

Amendments. The 2013 amendment deleted "and the Arkansas Fire and Police Pension Guarantee Fund" following "Review Board" in (a)(1).

24-11-810. [Repealed.]

Publisher's Notes. This section, concerning allocation and apportionment of insurance premium tax, was repealed by Acts 2003, No. 1797, § 6. The section was derived from Acts 1921, No. 491, § 13; Pope's Dig., § 7749; Acts 1949, No. 488, § 2; 1965, No. 431, § 3; 1981, No. 595,

§§ 3, 5, 6; 1985, No. 160, § 3; 1985, No. 754, §§ 2, 4, 5; A.S.A. 1947, §§ 12-3809, 19-2212.1, 19-2212.2, 19-2213; Acts 1987, No. 1033, § 5; 1999, No. 1288, § 1; 1999, No. 1570, § 4; 2001, No. 1539, § 2; 2001, No. 1543, § 7; 2001, No. 1701, §§ 6-8.

24-11-812. Tax levy by city council.

(a)(1) After being once approved by a majority of those voting on the question at any general or special election of any city of the first class or city of the second class, a tax not to exceed one (1) mill on the dollar upon the assessed value of the real and personal property in the city shall be levied annually by the city for the purpose of paying firefighters' retirement salaries and pensions and pensions to the widows and minor children of deceased firefighters and the widows and minor children of deceased retired firefighters.

(2) The levy shall be made by the city council or other governing body of the city on or before the time fixed by law for levying county taxes, and the city council or other governing body shall make out and certify to the county clerk the rate of taxation levied by the municipal corporation on the real and personal property within the city.

(3) The amount so certified shall be placed upon the tax book by the county clerk of the county and collected in the same manner that state and county taxes are collected. This amount shall be turned over to the board of trustees of the firemen’s relief and pension fund of the city, as created under §§ 24-11-801 — 24-11-807, 24-11-809, 24-11-810 [repealed], 24-11-813 — 24-11-815, and 24-11-818 — 24-11-820, 24-11-821 [repealed].

(b)(1) However, in those cities that do not have a firemen’s pension and relief fund but that cover their firefighters under the Arkansas Local Police and Fire Retirement System, the levy shall also be allowed when approved by a majority of the qualified electors of the cities or towns participating in a special election for the purpose of voting on the question.

(2) The election may be held in connection with the first general city election following the passage and approval of this subsection, but the failure to submit at the city or other election shall not defeat the right of submission at any subsequent election.

(3) Upon the filing with the county board of election commissioners not later than ninety (90) days before the date of the election requested in a petition signed by twenty (20) or more qualified electors of the city or town affected, stating the amount of tax to be voted on, not to exceed one (1) mill on the dollar, and praying that the question of a firemen’s pension be submitted, it shall be the duty of the county board of election commissioners to call the election in accordance with § 7-11-201 et seq.

(4) In the event that for any reason the question of a firemen’s pension is not voted upon in the next general city election after the passage and approval of this subsection, the question may be submitted at any other general or special election held in the city or town as provided in this subsection.

(5) The ballot shall state the amount of tax being voted on and the purpose thereof, and the question on the ballot shall be as follows:

“FOR Firemen’s Pension☐
AGAINST Firemen’s Pension☐”.

(c) Once so approved, the levy shall be certified in the same manner as provided in this section and shall be collected and turned over to the city for the sole purpose of payment for coverage of employees under the Arkansas Local Police and Fire Retirement System.

(d) A vote on the question of the tax provided for in this section shall be had in the same manner that the Arkansas Constitution and laws of this state provide for the initiation of measures in municipalities.

(e) The funds provided for in this section shall be supplemental to and in addition to any funds provided for by any laws in effect at the time of the passage of this section, shall become part of the firemen’s

relief and pension fund of the city, as created under §§ 24-11-801 — 24-11-807, 24-11-809, 24-11-810 [repealed], 24-11-813 — 24-11-815, and 24-11-818 — 24-11-820, 24-11-821 [repealed], and shall be administered by the board of trustees created by those sections, for the same class of beneficiaries and in the same manner as the funds provided for in §§ 24-11-801 — 24-11-807, 24-11-809, 24-11-810 [repealed], 24-11-813 — 24-11-815, and 24-11-818 — 24-11-820, 24-11-821 [repealed], since it is the specific intention of this section not to repeal §§ 24-11-801 — 24-11-807, 24-11-809, 24-11-810 [repealed], 24-11-813 — 24-11-815, and 24-11-818 — 24-11-820, 24-11-821 [repealed], or any amendments thereto, but rather to provide additional money for the firemen's relief and pension fund.

(f) In those cities that cover their firefighters under the Arkansas Local Police and Fire Retirement System, the funds shall be applied to each city's account in that system in such manner and amounts as determined by the Board of Trustees of the Arkansas Local Police and Fire Retirement System, if:

- (1) The city does not have a firemen's pension and relief fund; or
- (2) The city has consolidated administration of its firemen's pension and relief fund with the Arkansas Local Police and Fire Retirement System, even if there are no longer any members or beneficiaries remaining under the city's firemen's pension and relief fund.

History. Acts 1941, No. 14, §§ 1, 2, 4; 1985, No. 901, §§ 1, 2; A.S.A. 1947, §§ 19-2214, 19-2215, 19-2217; Acts 1989, No. 341, § 2; 2005, No. 2145, § 64; 2007, No. 608, § 2; 2007, No. 1049, § 86; 2009, No. 1480, § 105.

Amendments. The 2009 amendment substituted “§ 7-11-201 et seq.” for “§ 7-5-103(b)” in (b)(3).

24-11-813. Clerk's report to pension review board.

It is made the duty of the clerk of each city, town, or fire improvement district in which an organized firemen's relief and pension fund is maintained to file following each fiscal year a report with the Arkansas Fire and Police Pension Review Board of the number of firefighters with their names, dates of appointment, dates of retirement, birth dates, amounts of pensions paid, and other information as required by the Arkansas Fire and Police Pension Review Board.

History. Acts 1921, No. 491, § 16; 1927, No. 214, § 1; Pope's Dig., §§ 7752, 9879; Acts 1985, No. 754, § 3; A.S.A. 1947, § 19-2224; Acts 2013, No. 41, § 25.

substituted “following each fiscal year” for “on or before December 31 of each year,” “firefighter” for “fire fighter,” and “Arkansas Fire and Police Pension Review Board” for “pension review board.”

Amendments. The 2013 amendment

24-11-814. Subjection of fund to legal process.

(a) Either before or after its order of disbursement by the board to disabled members of the fire department, or to the surviving spouse, guardian of any minor children, or dependent parent of the deceased or

retired member of the department, no portion of the pension fund shall be held, seized, taken, subjected to, detained, or levied on by virtue of any attachment, garnishment, execution, injunction, or other order or decree, or any process or proceeding whatever, issued out of or by any court of this state, for the payment or satisfaction, in whole or part, of any debt, damages, claim, demand, or judgment against a member, his or her surviving spouse, the guardian of his or her minor children, or the dependent parent of any deceased member, nor shall the fund or any claim thereto be directly or indirectly assigned or transferred, and any attempt to so assign or transfer shall be void.

(b) The fund shall be sacredly held, kept, and distributed for the purpose of pensioning the persons named in this act and for no other purpose whatever.

History. Acts 1921, No. 491, § 18; Pope's Dig., § 7754; A.S.A. 1947, § 19-2226.

Publisher's Notes. This section is being set out to reflect gender neutral changes in (a).

24-11-817. Military service.

(a) In the event that a member of a firemen's relief and pension fund, while an employee, enters the armed forces of the United States during any period of compulsory or voluntary military service, the armed service actually served by him or her shall be credited him or her as service under this subchapter.

(b)(1) In any case of doubt as to the period of armed service to be so credited a member under this section, the board of trustees of the pension fund shall have final power to determine the period.

(2) Except for service credited under subsection (d) of this section, a member shall not be credited with a total of more than five (5) years of armed service.

(c) During the period of armed service and until the member's return as an employee, his or her contributions to the pension fund shall be suspended, and any balance remaining to his or her credit in the pension fund shall be accumulated at regular interest.

(d)(1)(A) Under the requirements of section 4312 of the Uniformed Services Employment and Reemployment Rights Act of 1994, Pub. L. No. 103-353, as in effect October 13, 1996, a member who leaves covered employment to serve in the uniformed services of the United States after giving notice to the employer and who returns to employment shall be treated as not having incurred a break in service with the employer.

(B) The employer shall certify to the pension fund that reemployment was in accordance with section 4312 of the Uniformed Services Employment and Reemployment Rights Act of 1994, Pub. L. No. 103-353, as in effect October 13, 1996.

(2) Under this subsection, the uniformed services of the United States are limited to the armed forces of the United States, the Army and Air National Guard when engaged in active duty for training,

inactive duty training, or full-time National Guard duty, the commissioned corps of the United States Public Health Service, and any other category of persons designated by the President of the United States in time of war or national emergency.

(3) The cumulative length of the absence from a position of employment with the employer by reason of service in the uniformed services for which service credit will be given shall not exceed five (5) years.

(4) A member whose uniformed service is honorably terminated and who reports for reemployment under this subsection within the time provided in section 4312 of the Uniformed Services Employment and Reemployment Rights Act of 1994, Pub. L. No. 103-353, as in effect October 13, 1996, shall be entitled to accrue benefits for the time the member served in the uniformed services by paying the employee contributions required by § 24-11-816, if any, within the time provided in section 4312 of the Uniformed Services Employment and Reemployment Rights Act of 1994, Pub. L. No. 103-353, and by repaying any amount the member may have previously withdrawn from the pension fund, with interest.

(5)(A) An employer reemploying a member under this subsection shall pay to the pension fund the employer contributions due for the time the member served in the uniformed services as required by § 24-11-816.

(B) However, if a member does not pay the employee contributions due, then no employer contributions are due.

(6) For the purposes of determining the employee and employer contributions due, the member's compensation during the period of service in the uniformed services shall be computed at:

(A) The rate the member would have received if the member had not served in the uniformed services; or

(B) The member's average compensation level during the twelve-month period, or shorter if applicable, immediately preceding the service.

(7) Unless both employee and employer contributions are paid, the member shall not be entitled to any accrued benefits for the time served in the uniformed services.

(8)(A) If a member dies on or after January 1, 2007, while performing Uniformed Services Employment and Reemployment Rights Act, Pub. L. No. 103-353, of 1994-qualified military service, the member shall be treated as though he or she resumed covered employment on the day before the day of death.

(B) For a member who had not attained a vested status in the pension fund, sufficient service credit shall accrue to permit the member to become vested.

(C) For a member who had attained a vested status, additional service credit accrual shall not occur.

(D) In all cases, the eligible benefit awarded by the pension fund under this section shall be a nonduty death benefit.

History. Acts 1985, No. 227, § 1; A.S.A. 1947, § 19-2236; Acts 1995, No. 1290, § 2; 2013, No. 41, § 26.

Amendments. The 2013 amendment deleted “Credit for” at the beginning of the section heading, and rewrote the section.

24-11-818. Benefits — Voluntary retirement.

(a)(1)(A) As used in this section, unless the context otherwise requires, the term “salary” shall mean recurring pays that are received for the firefighter’s regularly scheduled workweek and shall not include, except as otherwise provided in subdivision (a)(1)(B) of this section, payments for unused accrued sick leave or annual leave or the cash value of any nonrecurring or unusual remunerations.

(B)(i) The term “salary” may include the payments to a firefighter for unused accrued sick leave not to exceed ninety (90) workdays recorded on the records of the city or town as of the firefighter’s date of retirement, provided the municipality agrees by ordinance to make adequate contributions to the fund to cover the additional costs for the benefits from the increased salary, and the fund is judged by an actuarial determination to be actuarially sound.

(ii) The board of trustees shall determine the actuarial costs of the payments for the unused accrued sick leave to the fund.

(2) Any pension fund member who has served in a fire department in the State of Arkansas for a period of twenty (20) years or more, the last five (5) years of which shall have been consecutive, shall be entitled to be retired and receive from the fund a monthly pension equal to one-half ($\frac{1}{2}$) of the salary attached to the rank he or she held as a volunteer, part-paid, or full-paid member.

(b) Any firefighter who shall have completed the period of service as provided for in this section shall receive from the board a certificate showing that he or she has completed the term of service required and is entitled to participate in all the benefits provided for in this act upon compliance with, and subject to, all the other terms and conditions of this act, whether he or she severs his or her connections or continues in service at the expiration of the time as set out in subdivision (a)(2) of this section. The right to participate in the fund shall become a vested right and shall not be lost by the termination of his or her services with or without cause.

(c) Any full-paid firefighter who is already retired shall not receive less than three hundred fifty dollars (\$350) per month.

(d)(1)(A)(i) Any full-paid firefighter who has more than twenty (20) years of service at the time of retirement shall be entitled to receive the sum of twenty dollars (\$20.00) per month in addition to his or her regular retirement pay for each full year worked over and above twenty (20) years.

(ii) In no instance shall he or she receive more than one hundred dollars (\$100) per month in addition to his or her regular benefits.

(B)(i) A volunteer or part-paid firefighter who has more than twenty (20) years of service at the time of retirement shall be entitled to receive the sum of ten dollars (\$10.00) per month in addition to his

or her regular retirement pay for each full year worked over and above twenty (20) years.

(ii) In no instance shall he or she receive more than fifty dollars (\$50.00) per month in addition to his or her regular benefits.

(2) The increase in benefit levels provided in this subsection for service beyond twenty (20) years shall apply only to those firefighters who retire on or after January 1, 1987, and, notwithstanding the provisions of § 24-11-826, may exceed one hundred percent (100%) of final salary.

(e) A volunteer or part-paid firefighter who becomes a full-paid member of his or her fire department shall be eligible to retire as a full-paid member only if he or she shall have been employed as a full-paid member for a period of at least five (5) years immediately prior to his or her retirement.

(f)(1) For purposes of this subsection, the term "compensation" shall not include:

(A) Any money received by the retired firefighter for replacement of personal clothing or equipment destroyed during the performance of active service to a fire department; or

(B) Any expenditures by a municipality, as determined on a case-by-case basis, on behalf of the retired firefighter for hospitalization insurance benefits.

(2) Notwithstanding the provisions of subsection (a) of this section or any other law to the contrary, a person retired from the service of a fire department may remain actively involved in the fire department, provided the person does not receive compensation for the service provided.

(3) Service to a fire department under subdivision (f)(2) of this section shall not cause any suspension of retirement benefits payable under § 24-11-801 et seq., nor shall such service be interpreted by any board administering funds under § 24-11-801 et seq. as a reinstatement of employment in a fire department.

History. Acts 1921, No. 491, § 4; Pope's Dig., § 7740; Acts 1943, No. 167, § 2; 1953, No. 68, § 1; 1955, No. 77, § 1; 1957, No. 265, § 1; 1967, No. 233, § 1; 1983, No. 611, § 1; A.S.A. 1947, § 19-2204; Acts 1987, No. 389, § 1; 1987, No. 396, § 1; 1987, No. 797, § 1; 1989, No. 182, §§ 1-3; 1993, No. 546, § 3; 1993, No. 1197, § 3; 1999, No. 901, § 1; 1999, No. 1114, § 1; 2013, No. 41, § 27.

Amendments. The 2013 amendment substituted "firefighter" for "fire fighter" and "firefighter's" for "fire fighter's" throughout the section; substituted "that" for "which" in (a)(1)(A); and substituted "A volunteer" for "Any volunteer" in (d)(1)(B)(i).

24-11-819. Benefits — Disability retirement.

(a)(1) Any firefighter who becomes totally and permanently physically or mentally incapacitated for any suitable duty as an employee as a result of personal injury or disease may be retired by the board, upon written application filed by or on behalf of the member, if, after medical

examination of the member made by or under the direction of a physician designated by the board, the physician reports in writing that the member is physically or mentally totally incapacitated for the further performance of any suitable duty, that the incapacity will probably be permanent, and that the firefighter should be retired.

(2) The benefit amount shall be as follows:

(A) If the disabling injury or disease occurred while not actually performing work in gainful employment for the fire department, the monthly benefit shall be equal to the benefit paid to normal service retirees; or

(B)(i) For a full-paid firefighter who is injured in the line of duty, the monthly disability benefit shall either be equal to sixty-five percent (65%) of the salary attached to the rank held by the member in the fire department or shall be equal to the benefit paid to normal service retirees, whichever is greater.

(ii)(a) For purposes of this section, "injured in the line of duty" means a disabling injury or disease that occurs while conducting official fire department operations or while in training to become a firefighter.

(b) The board shall determine whether the disability occurred in the line of duty and may require any medical evidence, official reports, expert testimony, or other information to be supplied by the applicant in addition to the required physician's examination and report.

(iii)(a) The additional benefits provided in this section shall be effective for all qualifying applications first received by the board on or after January 1, 1987, except that the board of trustees of any municipal firemen's relief and pension fund or of the Arkansas Local Police and Fire Retirement System may increase the benefits for any disabled firefighter injured in the line of duty before January 1, 1987, but after January 1, 1983, if the board adopts a resolution to extend the benefit retroactively to those firefighters and if the fund will remain actuarially sound as determined by an actuary for the Arkansas Fire and Police Pension Review Board or the Arkansas Local Police and Fire Retirement System.

(b) The disability benefit provided in this section shall continue to be paid to the firefighter so long as he or she is retired and shall not be reduced to the regular service annuity amount, if less, when the retiree reaches the normal retirement age.

(iv) Upon the death of the retiree, any survivor benefits shall be based upon the annuity amount received by the member at the time of his or her death, excepting any amount payable under § 24-11-826.

(3) For purposes of computing all benefits, "salary" means recurring pays which are received for a regularly scheduled workweek and shall not include payments for unused accrued sick leave or annual leave or the cash value of any nonrecurring or unusual remunerations.

(4) Any disability benefit approved under this section shall be effective the first day of the calendar month next following the latter of

either the firefighter's termination of active membership or six (6) months before the date the written application was filed with the board.

(5) In the event that a firefighter's disability ceases, his or her benefit shall also cease, and he or she shall be returned to active service at not less than the same salary he or she received at the time of his or her retirement.

(b)(1) No person shall be retired as provided in this section or receive any pension from the fund unless there shall be filed with the board certificates of his or her disability. The certificates shall be subscribed and sworn to by the person and by the city or town physician, if there is one, and by the firemen's relief and pension fund physician.

(2) The board may require other evidence of disability before ordering the retirement and payment as provided in this section.

(c)(1) At least once each year during the first five (5) years, or as often as required by the board following a member's retirement for disability and at least once each three (3) years thereafter, the board may require any disability retirant who has not attained the normal retirement age to undergo a medical examination by or under the direction of a physician or physicians designated by the board.

(2) If the retirant refuses to submit to the medical examination in any period, his or her disability annuity may be suspended by the board until he or she complies with the provisions of this section.

(3) If his or her refusal continues for one (1) year, all his or her rights in and to a disability annuity may be revoked by the board.

(4) If, upon such medical examination of the retirant, the physician reports to the board that the retirant is physically and mentally able and capable of resuming suitable duty as an employee, his or her disability retirement shall terminate.

History. Acts 1921, No. 491, §§ 5-7, 9; 1991, No. 391, § 1; 1991, No. 844, § 1; Pope's Dig., §§ 7741-7743, 7745; Acts 2001, No. 1806, § 1; 2013, No. 41, § 28. 1955, No. 76, § 1; 1957, No. 95, § 1; 1968 (1st Ex. Sess.), No. 24, § 6; A.S.A. 1947, §§ 19-2205 — 19-2207, 19-2209; Acts **Amendments.** The 2013 amendment substituted "firefighter" for "fire fighter," "firefighter's" for "fire fighter's" and "fire-fighters" for "fire fighters" throughout the section; and rewrote (a)(2)(B)(iv). 1987, No. 325, § 1; 1989, No. 375, § 1; 1989, No. 390, § 1; 1989, No. 391, § 1;

24-11-820. Benefits — Death of active or retired member other than while employed outside department.

(a)(1) Whenever any member of a fire department of any city, town, or fire improvement district covered by this act shall have lost his or her life, except while actually performing work in gainful employment outside the fire department, or any retired member shall die, leaving a spouse or children under nineteen (19) years of age, then, upon satisfactory proof of those facts made to it, the board of trustees shall order and direct, in the case of volunteer or part-paid firefighters, that a monthly pension equal to the amount of the pension or retirement pay attached to the rank of the member of the fire department at the time

of his or her death shall be paid for life to the spouse. The monthly pension shall not be less than one hundred dollars (\$100).

(2) In the case of full-paid firefighters' classifications, a monthly pension shall be paid for life to the spouse in the amount of the pension received by the retired firefighter at the time of his or her death, or the amount of the pension to which the member would have been entitled on the day he or she died had he or she been retired, but in no event shall the benefit of the spouse be less than three hundred fifty dollars (\$350) per month, regardless of whether:

(A) The spouse has already been receiving pension payments; and

(B) The firefighter was on active duty or retired.

(b)(1)(A) In addition to the monthly pension provided in subsection (a) of this section, the board of trustees may order and direct the payment of, in the case of volunteer or part-paid firefighters, the sum of twenty-five dollars (\$25.00) per month for each child under nineteen (19) years of age who has not completed high school and, in the case of full-paid firefighters, the sum of one hundred twenty-five dollars (\$125) per month for each child under nineteen (19) years of age who has not completed high school.

(B) However, if the child enrolls in an institution of higher education after completing high school, the payments shall continue as long as the child is a full-time student, but in no instance beyond the child's twenty-third birthday.

(2)(A) If there is no eligible spouse at the time of the member's death, then the total sums shall be paid to his or her children until they shall have reached nineteen (19) years of age or until the children have completed high school, whichever occurs first.

(B) However, if a child enrolls in an institution of higher education after completing high school, the payments shall continue as long as the child is a full-time student, but in no instance beyond the child's twenty-third birthday.

(3)(A) The sum total of the pension to be paid the spouse or the qualifying child or children of volunteer or part-paid firefighters shall not exceed one-half ($\frac{1}{2}$) of the salary attached to the rank the member held at the time of his or her death as an active member of a volunteer or part-paid fire department, nor shall it be less than one hundred dollars (\$100) per month.

(B) However, the limit on the sum total amount under subdivision (b)(3)(A) of this section may be exceeded through the benefit increases authorized under § 24-11-102.

(4)(A) If any spouse or child shall marry, he or she shall thereafter receive no further pension under this subchapter. However, if he or she is a surviving spouse of a firefighter who is killed while in the official performance of his or her duties, then that surviving spouse's benefits may be restored to the spouse whose benefits had been terminated before or after August 1, 1997, upon his or her application to and approval by the board of trustees.

(B) The benefit restored under subdivision (b)(4)(A) of this section may include retroactive benefit increases to the last amount received

by the surviving spouse upon approval of the board of trustees after obtaining results of an actuarial study to determine its effect on the fund. The benefit restoration shall not include any retroactive lump-sum payment.

(5) If any retired firefighter shall marry after his or her retirement, the surviving spouse may be entitled to a pension under this subchapter if:

(A) He or she has been married to the firefighter for a period of at least five (5) years and the marriage occurred within five (5) years of the retirement date;

(B) The board of trustees for the fund decides to extend this benefit for its members; and

(C) The pension fund will be actuarially sound as determined by the actuary for the Arkansas Fire and Police Pension Review Board after this benefit increase is extended to members.

(c)(1) In computing service required under this section for eligibility to participate in benefits, service shall be computed from the day the person from whom benefits are derived was duly appointed and enrolled in some fire department in the State of Arkansas as a firefighter, and the service shall be considered in determining eligibility for benefits regardless of whether it was performed before or after the passage of §§ 24-11-801 — 24-11-807, 24-11-809, 24-11-810 [repealed], 24-11-813 — 24-11-815, and 24-11-818 — 24-11-820, 24-11-821 [repealed].

(2) It is the intention of this act that all spouses and dependent children of full-paid, part-paid, and volunteer firefighters shall receive at least the minimum benefits prescribed in this section, regardless of whether the service upon which the spouses or dependent children derived the benefit was performed before or after the passage of §§ 24-11-801 — 24-11-807, 24-11-809, 24-11-810 [repealed], 24-11-813 — 24-11-815, and 24-11-818 — 24-11-820, 24-11-821 [repealed].

(d) Any payment of benefits above the minimum amounts stated in this section shall not be made except upon determination that the fund will remain actuarially sound.

(e)(1) It is the intention of this section to make eligible for benefits the spouses and dependent children of members who died from illness after leaving active service or who died after being retired for a duty-related injury, as described in this section, regardless if the service, retirement, or death occurred before or after the passage of this section.

(2) However, payment to survivors made eligible by this section shall not be made retroactively but shall begin with the passage of this section.

(f)(1) If a retirant and, if any, his or her eligible beneficiary both die before they have received in annuity payments a total amount equal to the accumulated contributions, including any interest credits, standing to the retirant's credit in the system at the time of his or her retirement, the difference between the accumulated contributions and the total amount of annuities received by them shall be paid to such person or

persons as the retirant shall have nominated by written designation duly executed and filed with the board.

(2) If no designated person survives the retirant and his or her beneficiary, the difference shall be paid to the estate of the survivor of the retirant and his or her beneficiary.

History. Acts 1921, No. 491, § 8; Pope's Dig., § 7744; Acts 1943, No. 167, § 3; 1953, No. 68, § 2; 1955, No. 77, § 2; 1957, No. 94, § 1; 1969, No. 69, § 1; 1981, No. 253, § 1; 1983, No. 48, § 1; 1983, No. 397, §§ 1, 3; 1985, No. 145, §§ 1, 2; A.S.A. 1947, §§ 19-2208, 19-2208n, 19-2208.1; Acts 1989, No. 821, § 9; 1993, No. 1197,

§ 4; 1997, No. 536, § 1; 2003, No. 674, § 2; 2003, No. 1278, § 1; 2005, No. 1921, § 1; 2007, No. 614, § 1; 2013, No. 520, § 1.

Amendments. The 2013 amendment added "and the marriage occurred within five (5) years of the retirement date" to the end of (b)(5)A).

24-11-821. [Repealed.]

Publisher's Notes. This section, concerning benefits and cessation of payments, was repealed by Acts 2013, No. 41, § 29, effective Feb. 6, 2013. The section

was derived from Acts 1921, No. 491, § 10; Pope's Dig., § 7746; A.S.A. 1947, § 19-2210.

24-11-823. Increase in benefits for certain persons retired due to total permanent disability.

(a) The board of trustees of any municipal firemen's pension and relief fund may increase benefits to persons who have retired or may retire from the fire department of the municipality because of total and permanent disability and who qualify or may qualify for monthly benefits of less than five hundred dollars (\$500).

(b) The benefits of any such person shall not be increased to more than five hundred dollars (\$500) per month, and the increase shall be subject to the following conditions:

(1) The board of trustees shall adopt a resolution approved by not less than three-fourths ($\frac{3}{4}$) of the membership of the board outlining the proposed increase in benefits;

(2) The board shall obtain an actuarial valuation by an actuary stating that the fund will continue to be actuarially sound notwithstanding the effects of the resolution; and

(3) A copy of the resolution adopted by the board and a copy of the actuarial valuation approving the resolution shall be filed with the circuit clerk of the county in which the fire department is located, with the Arkansas Fire and Police Pension Review Board, and, if the fire department is located within the incorporated boundaries of a city, with the city clerk of that city.

History. Acts 1985, No. 619, § 1; A.S.A. 1947, § 19-2233.1; Acts 2013, No. 41, § 30.

substituted "actuarial valuation" for "evaluation" in (b)(2); and in (b)(3), substituted "valuation" for "evaluation" and "in which" for "wherein."

Amendments. The 2013 amendment

24-11-824. Fire protection districts.

(a) Any fire protection district in this state formed pursuant to §§ 14-284-101 — 14-284-121 and maintaining a fire department within that district is eligible to establish by resolution of the commissioners of the district a firemen's relief and pension fund covering the employees of that fire department.

(b)(1) The board of commissioners of the district together with the chief of the fire department of the district shall constitute the board of trustees of the firemen's relief and pension fund of the district and shall designate the beneficiaries thereof in the same manner and with the same qualifications as specified in § 24-11-801 et seq. for the designation of beneficiaries of firemen's relief and pension funds in cities and towns of this state.

(2) The boards of trustees of firemen's relief and pension funds established pursuant to this section shall be operated in the same manner, have the same powers and be subject to the same limitations imposed on, and granted to, those boards of trustees of firemen's relief and pension funds established by § 24-11-801 et seq.

(c) In addition to the funds provided by § 24-11-809 from insurance premium taxes, there shall also be added the following moneys:

(1) All money given or donated to the fund; and

(2)(A) Six percent (6%) of the monthly salary of each full-paid firefighter and each part-paid firefighter of the department, to be deducted each month by the district and immediately paid to the board of trustees of the firemen's relief and pension fund.

(B) However, in the event of resignation or discharge from the fire department of any member thereof, all money deducted from his or her salary shall be immediately returned to him or her without interest.

(d)(1) In the event the fire protection district maintaining a firemen's relief and pension fund pursuant to this section should be merged with, and become a part of, any city or town of this state having a firemen's relief and pension fund pursuant to § 24-11-801 et seq., the fund of the district shall be merged into, and for all purposes become a part of, the firemen's relief and pension fund of the city or town, and the board of trustees of the firemen's relief and pension fund of the city or town shall operate the firemen's relief and pension fund of the district as a part of the fund of the city or town and shall assume all obligations and assets of the district fund as its own.

(2) The board of trustees of the firemen's relief and pension fund of the merging district shall cease to exist upon the completion of the transfer and merger.

(e) The board of trustees of the firemen's relief and pension fund of any fire protection district formed pursuant to §§ 14-284-101 — 14-284-121 may expend moneys from the firemen's relief and pension fund for the purpose of purchasing and paying the premiums on group insurance covering the members of the fire department of the district against accidental injury or death occurring in the line of duty.

History. Acts 1965, No. 431, §§ 1, 2, 4, 5; 1965, No. 462, § 1; A.S.A. 1947, §§ 20-918 — 20-922; Acts 2013, No. 41, § 31.

Amendments. The 2013 amendment substituted “is eligible” for “shall be eligible” in (a); substituted “§ 24-11-801 et seq.” for “§§ 24-11-801 — 24-11-807, 24-11-809 — 24-11-811, 24-11-813 — 24-11-815, and 24-11-818 — 24-11-821” in (b)(1),

(b)(2) and (d)(1); in (b)(2), deleted the first sentence and inserted “be operated in the same manner”; in (c)(2)(A), substituted “Six percent (6%)” for “One percent (1%)” and “full-paid firefighter and each part-paid firefighter” for “member”; and substituted “firemen’s relief and pension fund” for “fund” in (d)(1).

24-11-825. Pensions for volunteer firefighters.

(a) Upon termination of volunteer firefighter service with all Arkansas fire departments, a firefighter whose covered volunteer employment has been with more than one (1) Arkansas fire department shall receive a pension based upon the volunteer service if all of the following conditions are satisfied:

(1) His or her volunteer service with his or her last employing fire department was for five (5) or more consecutive years and ended with his or her retirement;

(2) Previous volunteer service with each other fire department shall have been:

(A) For five (5) or more consecutive years;

(B) Covered by a local fire pension plan established by this subchapter; and

(C) Requested in writing for service credit by the retiring firefighter;

(3) Upon receipt of the request pursuant to subdivision (a)(2) of this section, each previous employing fire department shall certify the amount of the previous volunteer service to the local fire pension plan of the last employing fire department. The last local fire pension plan shall then cause to have performed at its expense an actuarial valuation to determine the single sum present value of the previous volunteer service being credited, based upon the benefit program the previous local fire pension plan had in effect at the time the firefighter terminated such previous service. The actuarial valuation shall be performed by the actuary of the Arkansas Fire and Police Pension Review Board. The dollar amount of the present value shall be promptly certified to the previous plan, which shall promptly pay that amount to the last pension plan;

(4) No more than one (1) year of service shall be credited any firefighter for all covered employment rendered by him or her in any one (1) year, nor shall any firefighter be given credited service for any time he or she was not an active firefighter;

(5) The firefighter shall cause to be transferred from each previous pension plan to the last pension plan the amount of his or her accumulated employee contributions with each previous pension plan; and

(6) The total of all service to be credited as described in this subsection must be at least twenty (20) years.

(b) The pension payable from the last pension plan shall be based upon the benefit program in effect for the last employing fire department. However, any pension fund that did not meet the actuarial standards for soundness as determined by the most recent actuarial valuation performed on the fund by the Arkansas Fire and Police Pension Review Board shall not transfer assets to another local pension fund for prior service of a former volunteer member, nor shall any volunteer member be given credited service time for which no transfer of assets is made.

(c) Upon a member's termination of volunteer firefighter service with all Arkansas departments for a period of not less than ninety (90) days, the member may return to volunteer service with an employer covered by a firemen's pension and relief fund and may continue to draw the retiree's pension if the retiree desires to return to volunteer service with an employer covered by a pension fund and voluntarily agrees to sign a waiver to earning any further service credit in any firefighter-related pension fund.

History. Acts 1987, No. 111, § 1; 2003, No. 1733, § 2.

24-11-826. Additional benefits for certain firefighters hired prior to January 1, 1983.

(a) Beginning July 1, 1987, in addition to the monthly pension benefits as set forth in §§ 24-11-801 — 24-11-807, 24-11-809, 24-11-812 — 24-11-815, 24-11-818, 24-11-820, and 24-11-821 [repealed], for those firefighters hired prior to January 1, 1983, and who continue to work beyond their twenty-fifth year, the member shall receive at age sixty (60) and thereafter a benefit on the amount equal to one and one-fourth percent (1.25%) of final salary attached to the rank which he or she held in the department preceding the date of retirement multiplied by the number of years of service in excess of twenty-five (25) years, up to a maximum total benefit of seventy-five percent (75%) of final salary, provided that the maximum seventy-five percent (75%) of final salary shall no longer apply to benefits payable on April 30, 1991, and thereafter to persons retiring henceforth and to those persons who retired on or after July 1, 1987. However, in no case shall the benefit payment exceed one hundred percent (100%) of final salary.

(b) This benefit shall be payable to the member only and not to surviving spouses or dependent children.

(c)(1) For the purposes of this section, "salary" means recurring pays that are received for a regularly scheduled workweek and shall not include, except as otherwise provided in this subsection, payments for unused accrued sick leave or annual leave or the cash value of any nonrecurring or unusual remunerations.

(2)(A) The term "salary" may include the payments to those firefighters under this section for unused accrued sick leave not to exceed ninety (90) workdays recorded on the records of the city or town as of

the firefighter's date of retirement, provided the municipality agrees by ordinance to make adequate contributions to the fund to cover the additional costs for the benefits from the increased salary and the fund is judged by an actuarial determination to be actuarially sound.

(B) The board of trustees shall determine the actuarial costs of the payments for the unused accrued sick leave to the fund.

History. Acts 1987, No. 878, § 1; 1991, No. 844, § 2; 1993, No. 546, § 4; 2013, No. 41, § 32.

Amendments. The 2013 amendment substituted "firefighters" for "fire fighters" in the section heading and throughout the

section; in (a), deleted "24-11-810" following "24-11-809" and "may have" preceding "held in the department"; and substituted "firefighters's" for "fire fighter's" in (c)(2)(A).

24-11-827. Retired member returning to active status.

(a) Notwithstanding any other provision of the law to the contrary, should an age or service retirant return March 1, 1986, or later to employment in a position covered by the firemen's relief and pension fund from which he or she retired, no pension payments shall be paid him or her for the period of the reemployment, and he or she shall make member contributions to the system as if he or she were an active member during the reemployment.

(b) If reemployment terminates before the retirant has rendered sufficient reemployment to accumulate at least three (3) years of credited service had he or she been an active member during the reemployment, the payment of his or her pension shall resume upon termination, under the form of payment in force at the beginning of reemployment and in an amount as it would be had he or she not been reemployed.

(c) If reemployment continues until the retirant has rendered sufficient reemployment to accumulate at least three (3) years of credited service, then effective upon completion of reemployment, his or her retirement shall be recalculated to account for the additional accrued service credit and salary.

History. Acts 1991, No. 429, § 1; 1992 (1st Ex. Sess.), No. 71, § 2; 1992 (1st Ex. Sess.), No. 76, § 1; 2013, No. 41, § 33.

Amendments. The 2013 amendment, in (a), substituted "the" for "such" twice and "shall make member" for "may make

member"; redesignated (b)(1) as (b) and deleted (b)(2); in (b), substituted "the reemployment" for "such reemployment" and deleted "such" preceding "termination"; and rewrote (c).

24-11-829. Increase in surviving spouse benefits.

(a) Notwithstanding the other provisions of this chapter, the board of trustees of any municipal firemen's relief and pension fund for which a full one-mill tax is levied and which received in excess of five hundred thousand dollars (\$500,000) from premium tax funds during the most recent year shall increase surviving spouse benefits payable from the firemen's relief and pension fund to the amount of the pension received

by the retired firefighter at the time of his or her death, or the amount of the pension to which the member would have been entitled on the day he or she died had he or she been retired.

(b) The board of trustees shall direct a monthly pension in the increased amount effective on or before August 1, 1993.

History. Acts 1993, No. 480, § 1; 2013, substituted “firefighter” for “fire fighter” No. 41, § 34. in (a).

Amendments. The 2013 amendment

24-11-830. Deferred retirement option plan.

(a) In lieu of terminating employment and accepting a service retirement pension pursuant to this subchapter, any full-paid firefighter who is a member of a firemen’s pension and relief fund who has not less than twenty (20) years of credited service and who is eligible to receive a service retirement pension may elect to participate in the Arkansas Fire Fighters’ Deferred Retirement Option Plan and defer the receipt of benefits in accordance with the provisions of this section, provided the local firemen’s pension and relief fund board of trustees approves the participation in the plan.

(b) For purposes of this section, credited service shall include service credit recognized pursuant to this subchapter.

(c)(1)(A) Except under subdivision (c)(1)(B) of this section, the duration of participation in the plan for active full-paid firefighters shall not exceed five (5) years.

(B) The five-year limit may be extended if:

(i) The extension does not cause the limit to exceed ten (10) years;

(ii) The extension applies to all active full-paid firefighters and all members on the plan;

(iii) The extension is approved by a majority of votes of the board of trustees of the pension and relief fund or of the Board of Trustees of the Arkansas Local Police and Fire Retirement System for funds whose administrative responsibility has been assigned to the system as provided in § 24-11-406(b);

(iv) The interest credited after the first five (5) years on the plan shall be two (2) percentage points below the rate of return of the investment portfolio of the fund and shall not be determined under subdivision (e)(2) of this section, but the interest rate credited shall not be less than zero percent (0%);

(v) Seventy-five percent (75%) of the monthly retirement benefits that would have been payable had the member elected to cease employment and receive a service retirement shall be paid into the plan account, or one hundred percent (100%) of the monthly retirement benefits that would have been payable had the member elected to cease employment and receive a service retirement shall be paid into the plan account if approved by a majority vote of the governing board of the sponsoring municipality; and

(vi) The extension is approved by a majority vote of the governing body of the sponsoring municipality after receiving approval for an increase in benefits under § 24-11-102.

(2)(A) Except under subdivision (c)(2)(B) of this section, at the conclusion of a member's participation in the plan, the member shall terminate employment with all participating municipalities as a firefighter and shall start receiving the member's accrued monthly retirement benefit from the firemen's pension and relief fund.

(B) If a member is at the conclusion of a member's participation in the plan, then the member may continue employment by a municipality under the following conditions:

(i) The municipality makes continued employment available to all similarly situated members;

(ii) The availability of continued employment is approved by a majority vote of the governing body of the sponsoring municipality after receiving approval for an increase in benefits under § 24-11-102;

(iii) The monthly benefit that is credited to the member's plan account is discontinued and the member shall not receive a monthly benefit until the member actually ceases employment;

(iv) The interest rate credited to the plan account is the same as paid under subdivision (e)(2) of this section, except that the minimum rate is zero percent (0%);

(v) The employer's matching contribution of six percent (6%) shall cease, but all other employer contributions shall continue and be credited to the pension and relief fund; and

(vi) The employee contributions of six percent (6%) shall discontinue.

(d)(1) When a member begins participation in the plan, the contribution of the firefighter and the employer contribution shall continue to be paid.

(2)(A) In a municipality having a population of over twenty thousand (20,000) persons, municipal matching contributions for employees who elect the plan shall be credited equally to the firemen's pension and relief fund and to the plan, or at the option of the local firemen's pension and relief fund board of trustees, credited in the manner provided in subdivision (d)(2)(B) of this section.

(B) In a municipality having a population of twenty thousand (20,000) persons or less, municipal matching contributions for employees who elect the plan shall be credited in full to the firemen's pension and relief fund, and the contribution of the employee shall be credited to the member's plan account.

(3) The monthly retirement benefits that would have been payable had the member elected to cease employment and receive a service retirement shall be paid into the plan account.

(e)(1) The member's monthly retirement benefit shall not change, unless the plan receives a benefit increase.

(2)(A) A member who participates in this plan shall earn interest at a rate of two (2) percentage points below the rate of return of the

investment portfolio of the firemen's pension and relief fund as certified by the actuary under contract with the Arkansas Fire and Police Pension Review Board in accordance with generally accepted actuarial practices and § 24-11-207, but no less than the actuarial assumed interest rate as certified by the actuary.

(B) The interest shall be credited to the individual account balance of the member on an annual basis.

(f)(1) A participant in the plan shall receive at the option of the participant a lump-sum payment from the account equal to the payments to the account or a true annuity based upon the account of the participant or may elect any other method of payment if approved by the board of trustees.

(2) If approved by a majority vote of the governing body of the sponsoring municipality and the board of trustees, a participant in the deferred retirement option plan may defer receiving payment of the participant's account and continue with the funds deposited in the plan.

(3)(A) Interest credited to the continuing deposit of funds in the plan under subdivision (f)(2) of this section shall be calculated in the same manner as interest under subdivision (e)(2) of this section.

(B) However, the minimum interest rate shall not be less than zero percent (0%).

(4) The payment of funds accumulated while participating in the deferred retirement option plan may be deferred only one (1) time. These funds must be distributed or annuitized by December 31 of the year a member attains age seventy and a half (70½).

(g) If the participant dies during the period of participation in the plan, a lump-sum payment equal to the account balance of the participant shall be paid.

(h) The Arkansas Fire and Police Pension Review Board may promulgate regulations to make the plan under this section comply with the requirements of this section and with the applicable portions of the Internal Revenue Code, as it existed on January 1, 2003.

History. Acts 1993, No. 1004, § 1; 1997, No. 492, § 2; 1999, No. 1457, § 2; 2003, No. 1369, § 1; 2003, No. 1371, §§ 3, 4; 2003, No. 1372, § 3; 2005, No. 1251, § 1.

U.S. Code. The Internal Revenue Code, referred to in (h), is codified as 26 U.S.C.S. § 1 et seq.

24-11-831. [Repealed.]

Publisher's Notes. This section, concerning insurance premium taxes, was repealed by Acts 2007, No. 73, § 3. The

section was derived from Acts 1997, No. 1215, § 1.

24-11-832. Applicability of § 24-11-820.

The provisions of § 24-11-820(b)(1) and (2) extending the survivorship benefits for children of deceased firefighters through their college

years shall apply retroactively to any situation involving a surviving child that began on or after January 1, 1996.

History. Acts 1997, No. 536, § 2; 2005, No. 1921, § 2.

24-11-833. Fire-related service.

(a) A member of a firemen's relief and pension fund who has fire-related service with the municipal government is entitled to purchase credited service in the system equivalent to the amount of employment service he or she has with the municipal fire department in a position as fire-related employment service up to a maximum of three (3) years of credited service, provided that the member contributes to the system an amount as the Arkansas Fire and Police Pension Review Board shall determine would be actuarially equivalent to the value of the service purchased.

(b) The board shall have the final power to determine the value of the service purchased.

(c) Service credit purchased under this section may be used to determine the member's total credited service for the amount upon retirement and shall not be used to determine his or her final average pay for service under the system.

(d) As used in this section, "fire-related service" means service with a municipality that has firefighters covered under a firemen's relief and pension fund in a job or in a paid position within a covered fire department or fire department where the person performs duties that are related to the delivery of fire services, including service such as a fire department radio dispatcher or other similar service.

History. Acts 1999, No. 1171, § 2; member" and "is entitled" for "shall be entitled"; and in (d), substituted "that" for

2013, No. 41, § 35. **Amendments.** The 2013 amendment, "which" twice and "has firefighters" for in (a), substituted "A member" for "Any" "has fire fighters."

24-11-834. Former military service credit purchase.

(a) An active member of a firemen's relief and pension fund may purchase credited service in the pension fund equivalent to a period not to exceed five (5) years for service rendered by the member while on active duty in the armed forces of the United States before the member's employment covered by the pension fund, if the member:

- (1) Received an honorable discharge from the armed forces;
- (2) Has at least twenty (20) years of actual service in the pension fund; and

(3)(A) Contributes to the pension fund an amount that is the actuarial equivalent of the value of the credited service to be purchased.

(B) The actuarial equivalent is of the time of the purchase of the credited service and shall be determined by the actuary for the Arkansas Fire and Police Pension Review Board, or for a pension

fund under administration of the Arkansas Local Police and Fire Retirement System, the actuary for that system.

(b) The board of trustees of the pension fund shall make the final determination as to the:

- (1) Length of purchased service credit;
- (2) Amount of regular interest to be charged; and
- (3) Manner in which payment is made to the pension fund.

(c) Service credit purchased under this section shall be used to determine the member's total credited service under the pension fund but shall not be used to determine his or her final average pay under the pension fund.

History. Acts 2003, No. 602, § 1; 2009, subdivisions accordingly, and made a related change.
No. 256, § 2; 2013, No. 41, § 36.

Amendments. The 2009 amendment The 2013 amendment rewrote the section heading and the section.
deleted (b)(3), redesignated the remaining

CHAPTER 12

LOCAL OFFICERS AND EMPLOYEES — MISCELLANEOUS PROVISIONS

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. INVESTMENT ADVISOR TO INVEST PLAN ASSETS.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 24-12-101. Definitions.
- 24-12-103. Vote to effect act.
- 24-12-109. Investment.
- 24-12-110. Payments.
- 24-12-121. City clerk — Clerk-treasurer.
- 24-12-123. Mayors of cities of the first class.
- 24-12-124. Mayors of cities of the second class.

SECTION.

- 24-12-127. Recorder-treasurers and city treasurers of the second class.
- 24-12-132. Health benefits for retired municipal employees and officials.

Effective Dates. Acts 2009, No. 1201, § 9: Apr. 7, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the statutes relating to payments from the local pension and relief funds need amending in order for the investments of the assets in the local pension and relief funds to be consistent with the practicalities of the market. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and

safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2009, No. 1480, § 117: Apr. 10, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act makes various revisions to Arkansas

election laws that are designed to improve the administration of elections and special elections and that these revisions should be implemented as soon as possible so that the citizens of this state may benefit from improved election procedures. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2013, No. 1065, § 15, as amended by Acts 2013, No. 1444, § 1: Apr. 11, 2013. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the local police and fire retirement systems provide economic security for eligible citizens of Arkansas; that the statutes need amending to update and clarify existing law; and that these changes need to be made immediately. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the

public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2013, No. 1444, § 2: Apr. 22, 2013. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that Act 1065 of 2013 was enacted with an erroneous emergency clause; that the error needs to be rectified as quickly as possible to effect the will of the General Assembly; and that this act is immediately necessary because it will correct and address the error found in the emergency clause of Act 1065 of 2013. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

24-12-101. Definitions.

As used in this act, "paid nonuniformed employees":

(1) Means the mayor, city attorney, city treasurer, city clerk, or municipal judge of any city to which this act is applicable when the mayor, city attorney, city treasurer, city clerk, or municipal judge elects to be so included; and

(2) May include the other full-time paid nonuniformed employees of the city.

History. Acts 1949, No. 147, § 1; 1961, No. 501, § 1; 1981, No. 909, § 5; A.S.A. 1947, § 19-922; Acts 2003, No. 1281, § 2.

24-12-103. Vote to effect act.

(a) The provisions of this act shall be suspended and inoperative in any city affected by the provisions of the act until made available by a vote favorable thereto of the majority of the qualified electors of the

cities participating in any election on the question at a special election called for the purpose of voting on the question.

(b) The election may be held in connection with the first general city election following the passage and approval of this act, but the failure to submit or the failure to adopt at the city or other election shall not bar, abridge, or defeat the right of submission at any subsequent election.

(c) Upon the filing with the county board of election commissioners not later than ninety (90) days before the date of the election requested in a petition signed by twenty (20) or more qualified electors of the city affected and praying that the question of paid nonuniformed employees' pensions and the levying of a tax therefor, not exceeding one and one-half (1½) mills, be submitted, it shall be the duty of the county board of election commissioners to call the election in accordance with § 7-11-201 et seq.

(d) If for any reason the question is not voted upon at the next general city election after the passage and approval of this act, the question may be submitted at any other general or special election held in the city as provided in this section.

(e) The question on the ballot shall be as follows:

“FOR Paid Nonuniformed Employees pensions and the levying of a mill tax of (amount here designated on ballot not exceeding one and one-half (1½) mills) therefor ☐
AGAINST Paid Nonuniformed Employees pensions and the levying of a mill tax of (amount here designated on ballot not exceeding one and one-half (1½) mills) therefor ☐.

History. Acts 1949, No. 147, § 22; 1961, No. 501, § 2; A.S.A. 1947, § 19-942; Acts 2005, No. 2145, § 65; 2007, No. 1049, § 87; 2009, No. 1480, § 106.

Amendments. The 2009 amendment substituted “§ 7-11-201 et seq.” for “§ 7-5-103(b)” in (c).

24-12-109. Investment.

(a) The board of trustees shall have the power to draw sums from its treasury to invest in the name of the board of trustees of the paid nonuniformed employees' pension and relief fund in interest-bearing bonds of the United States, of the State of Arkansas, or of the city in which the board is located or in a local government joint investment trust pursuant to the Local Government Joint Investment Trust Act, § 19-8-301 et seq.

(b) All securities shall be deposited with the treasurer of the board of trustees of the pension and relief fund and shall be subject to the orders of the board.

(c)(1) In those nonuniformed employees' pension and relief funds in which assets exceed one hundred thousand dollars (\$100,000), the board of trustees may employ:

(A) An investment advisor to invest the assets, subject to the terms, conditions, limitations, and restrictions imposed by law upon the Arkansas Public Employees' Retirement System; and

(B) A trustee or custodian to hold the assets.

(2) The investments shall not be limited to interest-bearing bonds.

History. Acts 1949, No. 147, § 5; A.S.A. 1947, § 19-926; Acts 1993, No. 1130, § 1; 1995, No. 615, § 4; 2009, No. 1201, § 7; 2013, No. 1065, § 14.

Amendments. The 2009 amendment, in (c)(1), inserted (c)(1)(B), redesignated the existing text accordingly, and made related changes.

The 2013 amendment, in (c)(1)(A), deleted "as defined in § 24-10-402(a)(2)(A)(ii)" following "advisor", and substituted "Public Employees' Retirement System" for "Local Police and Fire Retirement System, as provided by § 24-10-401 et seq."

24-12-110. Payments.

(a) Except as provided in subsection (c) of this section, all moneys paid from the pension and relief fund shall be paid by the treasurer only upon warrants signed by the chair and countersigned by the secretary thereof.

(b) Except as provided in subsection (c) of this section, no warrant shall be drawn except by the order of the board, and interest accruing from the fund, while on deposit or otherwise, shall constitute a part of the fund.

(c) In a pension and relief fund in which the board has employed a trustee or custodian under § 24-12-109(c) to hold the assets, the trustee or custodian may pay benefits to persons and beneficiaries entitled to benefits under the fund as directed by the board.

History. Acts 1949, No. 147, § 6; A.S.A. 1947, § 19-927; Acts 2009, No. 1201, § 8.

inserted "Except as provided in subsection (c) of this section" in (a) and (b); added (c);

Amendments. The 2009 amendment

and made related changes.

24-12-121. City clerk — Clerk-treasurer.

(a)(1) A city clerk or clerk-treasurer in a city of the first class may retire from office for the remainder of his or her life at the retirement pay provided in this section if the person has served as city clerk, clerk-treasurer, or city treasurer for:

(A) Not less than ten (10) years, upon reaching sixty (60) years of age; or

(B) Twenty (20) years, without regard to age.

(2) On January 1 of each year, if a retiree under this section has been retired for at least twelve (12) full months, up to a three percent (3%) cost-of-living increase will be added.

(3) Subdivision (a)(2) of this section applies only if approved by the governing body of the city.

(b)(1) Any city clerk, city treasurer, or any person serving as city clerk or clerk-treasurer who shall retire or be succeeded by another city clerk or clerk-treasurer within the provisions of this section shall be

paid monthly a sum equal to one-half ($\frac{1}{2}$) of the monthly salary received by him or her during the last preceding year of his or her service.

(2) The retirement pay shall be paid by the city from its general fund account.

(c)(1) Any city clerk or clerk-treasurer in a city of the first class who has served in another capacity with the same city, and that capacity of service also provides for a retirement plan, may apply all years served in that previous capacity toward the accrual of the vesting period provided for in subsection (a) of this section, if approved by the city council.

(2) Benefits shall be paid proportionally from the various funds applicable to the respective capacities of service. This shall be based on the length of service in each capacity for the city.

(d)(1) Upon the death of any city clerk or clerk-treasurer who retired under the provisions of subsection (a) of this section or any other state statute or any city clerk or clerk-treasurer who dies in office after becoming eligible to retire under subsection (a) of this section or any other state statute, the legally recognized spouse of the city clerk or clerk-treasurer married to the city clerk or clerk-treasurer ten (10) years or longer may receive, at the option of the governing body of the city, one-half ($\frac{1}{2}$) of the retirement benefit the retired city clerk or clerk-treasurer was receiving or one-half ($\frac{1}{2}$) of the retirement benefit the city clerk or clerk-treasurer who died in office was entitled to receive.

(2) Upon remarriage of the spouse, the benefits shall cease.

History. Acts 1957, No. 313, §§ 1, 2; 1993, No. 1103, § 1; 2007, No. 158, § 1; 1971, No. 356, §§ 1, 2; A.S.A. 1947, §§ 19-1031, 19-1032; Acts 1987, No. 117, § 1; 2007, No. 293, § 1.

24-12-123. Mayors of cities of the first class.

(a)(1)(A) In all cities of the first class in this state, any person who shall serve as mayor of the city for a period of not less than ten (10) years, upon reaching age sixty (60), or any person who shall serve as mayor of the city for a period of not less than twenty (20) years, without regard to age, shall be entitled to retire at an annual retirement benefit during the remainder of the person's natural life, payable at the rate of one-half ($\frac{1}{2}$) of the salary payable to the mayor at the time of retirement.

(B) The governing body of the city may provide by ordinance that any person who has served as mayor for a period of not less than ten (10) years may retire upon reaching age fifty-five (55) with the benefits provided under this section.

(2) The retirement payments shall be paid monthly and shall be paid from the city general fund.

(3) However, a mayor who has served as an elected official or employee of that city prior to or after the person's service as mayor shall

count his or her service as an elected official or employee of that city towards the mayor's retirement as follows:

(A)(i) At the rate of one (1) year of a mayor's retirement for each two (2) years served as an elected official or an employee of that city up to a maximum of an additional two (2) years' credit towards a mayor's retirement benefit;

(ii) If authorized by a city ordinance, at the rate of one (1) year of a mayor's retirement benefit for each two (2) years served as an elected official or an employee of that city up to a maximum of three (3) additional years' credit towards a mayor's retirement benefit if the person has not fewer than twenty (20) years of mayor's credit and is at least fifty-two (52) years of age; or

(iii) If authorized by a city ordinance, at the rate of one (1) year of a mayor's retirement benefit for each two (2) years served as an elected official or an employee of that city up to a maximum of four (4) additional years' credit towards a mayor's retirement benefit if the person has not fewer than twenty (20) years of mayor's credit and is at least fifty-four (54) years of age; and

(B) Service as an elected official or as an employee of the city that is also covered under another retirement plan offered by the city or that is covered by another benefit provided for by law shall not be applied towards the mayor's retirement benefits provided for under this section.

(4) The minimum retirement benefits shall be two hundred fifty dollars (\$250) per month for both salaried and nonsalaried mayors.

(5) On January 1 of each year, if a retiree under this section has been retired for at least twelve (12) full months, up to a three percent (3%) cost-of-living increase will be added.

(6) Subdivision (a)(5) of this section applies only if approved by the governing body of the city.

(b)(1) On the death of any mayor retired under the provisions of subsection (a) of this section or any other acts of the General Assembly, or any mayor who dies in office after becoming eligible to retire under subsection (a) of this section or any other acts of the General Assembly, the spouse of the mayor married to the mayor for ten (10) years or longer may, at the option of the governing body of the city, receive one-half ($\frac{1}{2}$) of the retirement benefit the retired mayor was receiving or one-half ($\frac{1}{2}$) of the retirement benefit the mayor who died in office was entitled to receive.

(2) However, upon remarriage of the spouse, the benefits shall cease.

(3) The provisions of this subsection are retroactive to November 1, 1983, at the sole discretion of the governing body of the city.

(c) Any mayor retired prior to July 20, 1987, and receiving benefits under prior acts of the General Assembly shall be entitled to continue receiving benefits under the prior acts.

History. Acts 1987, No. 414, §§ 1-3; 1997, No. 212, § 1; 2001, No. 1615, § 1; 2001, No. 1700, § 1; 2007, No. 293, § 2.

CASE NOTES

Construction With Other Laws.

Because West Helena, Ark., Ordinance 4B was in direct conflict with this section and could not override the requirements of this section pursuant to the terms of

Ark. Const., Art. 12, § 4, a former mayor was not currently entitled to retirement benefits under Ordinance 4B. *Municipality of Helena-West Helena v. Weaver*, 374 Ark. 109, 286 S.W.3d 132 (2008).

24-12-124. Mayors of cities of the second class.

(a)(1) A person who has served as mayor of a city of the second class for at least twenty (20) years may retire at any age, and a person who has served as a mayor of a city of the second class for at least sixteen (16) years may retire upon reaching sixty-five (65) years of age.

(2) On January 1 of each year, if a retiree under this section has been retired for at least twelve (12) full months, up to a three percent (3%) cost-of-living increase will be added.

(3) Subdivision (a)(2) of this section applies only if approved by the governing body of the city.

(b) The governing body of a city of the second class may prescribe the retirement benefits of a person who has served as mayor of the city of the second class and meets the requirements of subsection (a) of this section.

(c) Any mayor who retired before March 18, 1985, and received benefits under prior acts of the General Assembly shall be entitled to continue receiving benefits under the prior acts.

History. Acts 1985, No. 388, §§ 1, 2; A.S.A. 1947, §§ 19-1115, 19-1116; Acts 2007, No. 293, § 3; 2009, No. 144, § 1.

Amendments. The 2009 amendment inserted (b) and redesignated the following subsection accordingly.

24-12-127. Recorder-treasurers and city treasurers of the second class.

(a)(1) Any recorder-treasurers and city treasurers in a city of the second class who shall have served as recorder-treasurer and city treasurer for a period of not less than ten (10) years, upon reaching the age of sixty (60), or who shall serve twenty (20) years without regard to age, may, upon a vote of approval by the governing body of the city, retire from office for the remainder of his or her life at the retirement pay provided for in this section.

(2) On January 1 of each year, if a retiree under this section has been retired for at least twelve (12) full months, up to a three percent (3%) cost-of-living increase will be added.

(3) Subdivision (a)(2) of this section applies only if approved by the governing body of the city.

(b)(1) Any recorder-treasurer or city treasurer or any person serving as recorder-treasurer or city treasurer who shall retire or be succeeded by another recorder-treasurer or city treasurer within the provisions of this section shall be paid monthly a sum equal to one-half (½) of the monthly salary received by him or her during the last preceding year of his or her service.

(2) The retirement pay shall be paid by the city from its general fund account.

(c)(1) Upon the death of any recorder-treasurer or treasurer who retired under the provisions of subsection (a) of this section or any other state statute or any recorder-treasurer or treasurer who dies in office after becoming eligible to retire under subsection (a) of this section or any other state statute, the legally recognized spouse of the recorder-treasurer or treasurer married to the recorder-treasurer or treasurer for ten (10) years or longer may receive, at the option of the governing body of the city, one-half (½) of the retirement benefit the retired recorder-treasurer or treasurer was receiving or one-half (½) of the retirement benefit the recorder-treasurer or treasurer who died in office was entitled to receive.

(2) Upon remarriage of the spouse, the benefits shall cease.

History. Acts 1991, No. 987, § 1; 2007, No. 158, § 2; 2007, No. 293, § 4.

24-12-129. Municipal officials and employees.

CASE NOTES

Health Insurance.

This section and § 24-12-130 do not prevent a city from contracting to pay retiree health insurance premiums; this section does not restrict a municipality's ability to offer its employees more or var-

ied coverage, as § 24-12-130 clarifies. Therefore, a city could contract to pay retiree health insurance premiums without running afoul of this section. AF-SCME, Local 2957 v. City of Benton, 513 F.3d 874 (8th Cir. 2008).

24-12-130. Limitation on benefits provided by Acts 1997, No. 1098.

CASE NOTES

Health Insurance.

Section 24-12-129 and this section do not prevent a city from contracting to pay retiree health insurance premiums; § 24-12-129 does not restrict a municipality's ability to offer its employees more or var-

ied coverage, as this section clarifies. Therefore, a city could contract to pay retiree health insurance premiums without running afoul of § 24-12-129. AF-SCME, Local 2957 v. City of Benton, 513 F.3d 874 (8th Cir. 2008).

24-12-132. Health benefits for retired municipal employees and officials.

(a) A retired employee or official may participate in the health care plan of the municipality from which he or she retired if he or she:

(1) Is receiving a retirement benefit from the Arkansas Local Police and Fire Retirement System, Arkansas Public Employees' Retirement System, or a local pension fund;

(2) Pays both the employer and the employee contribution to the health care plan;

(3) Is not covered at any time during retirement by another health care plan; and

(4) Notifies his or her employer within thirty (30) days after the official date of retirement of his or her intent to participate in the health care plan of the municipality.

(b) A retired employee or official who participates in a municipality's health care plan under subsection (a) of this section may include his or her dependents in the retiree's health care plan if the retired employee or official pays both the employer and employee contribution to the health care plan for his or her dependents.

(c) Each municipality may choose to pay any portion of the employer and employee contributions to the municipality's health care plan so long as each retired official and each retired employee of the municipality from which he or she retired is treated equally with regard to the dollar amounts that are paid by the municipality toward health care coverage of each retiree.

(d) The retired municipal official or retired municipal employee shall pay the amount of the health care premium that is not paid by the employer.

(e) Each municipality shall by policy or ordinance establish the criteria for eligibility as a retiree under this section.

History. Acts 2009, No. 1279, § 1.

SUBCHAPTER 2 — INVESTMENT ADVISOR TO INVEST PLAN ASSETS**SECTION.**

24-12-201. Definitions — Power to invest.

24-12-202. Authority to employ investment advisor — Investment policy.

SECTION.

24-12-203. Immunity — Jurisdiction.

24-12-201. Definitions — Power to invest.

(a) For purposes of this subchapter, "city" means cities of the first class, cities of the second class, and incorporated towns.

(b) Subject to subsection (c) of this section, a board of trustees of a city nonuniformed employees' pension plan with assets in excess of one hundred thousand dollars (\$100,000) shall have full power to:

(1) Invest and reinvest the moneys of the plan; and

(2) Hold, purchase, sell, assign, transfer, or dispose of any of the investments so made and the proceeds of the investments and moneys.

(c) The investments and reinvestments shall only be made in accordance with the prudent investor rule set forth in §§ 24-2-610 — 24-2-619.

History. Acts 1999, No. 50, § 1; 1999, No. 332, § 1.

Publisher's Notes. This section is being set out to correct a reference in (c).

24-12-202. Authority to employ investment advisor — Investment policy.

(a) A board of trustees of a city nonuniformed employees' pension plan with assets in excess of one hundred thousand dollars (\$100,000) may employ an investment advisor as its agent to make investment recommendations and to invest the assets pursuant to a written board investment policy, provided that the governing body of the city declares such services professional services under § 19-11-806 [repealed], and subject to the terms, conditions, limitations, and restrictions imposed by law upon investments of state retirement systems as set forth in §§ 24-2-610 — 24-2-619.

(b) The investment policy shall not limit the investments to interest-bearing bonds.

History. Acts 1999, No. 50, § 2; 1999, No. 332, § 2.

Publisher's Notes. This section is being set out to correct a reference in (a).

24-12-203. Immunity — Jurisdiction.

(a) Trustees who comply with the requirements of § 24-2-618(a) are not liable to the beneficiaries or to the trust for the decisions or actions of the agent to whom the function was delegated.

(b) By accepting the delegation of a trust function from the trustees of a trust that is subject to the law of this state, an agent submits to the jurisdiction of the courts of this state.

History. Acts 1999, No. 50, § 3; 1999, No. 332, § 3.

Publisher's Notes. This section is being set out to correct a reference in (a).

TITLE 25

STATE GOVERNMENT

CHAPTER.

1. GENERAL PROVISIONS.
2. ADMINISTRATIVE DEPARTMENTS GENERALLY.
3. DEPARTMENT OF ARKANSAS HERITAGE.
4. DEPARTMENT OF INFORMATION SYSTEMS.
6. DEPARTMENT OF EDUCATION.
8. DEPARTMENT OF FINANCE AND ADMINISTRATION.
9. DEPARTMENT OF HEALTH.
10. DEPARTMENT OF HUMAN SERVICES.
11. ARKANSAS ECONOMIC DEVELOPMENT COMMISSION.
14. ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY.
15. ADMINISTRATIVE PROCEDURES.
16. STATE OFFICERS.
17. MANAGEMENT OF STATE INSTITUTIONS.
18. PUBLIC RECORDS.
19. FREEDOM OF INFORMATION ACT OF 1967.
20. INTERLOCAL COOPERATION ACT.
24. MARTIN LUTHER KING, JR. COMMISSION.
26. INFORMATION TECHNOLOGY.
27. ARKANSAS INFORMATION NETWORK.
28. ASSESSMENT COORDINATION DEPARTMENT.
29. ARKANSAS DEAF AND HEARING IMPAIRED TELECOMMUNICATIONS SERVICES CORPORATION.
30. DEPARTMENT OF CAREER EDUCATION.
31. ELECTRONIC RECORDS AND SIGNATURES.
32. UNIFORM ELECTRONIC TRANSACTIONS ACT.
33. EXECUTIVE CHIEF INFORMATION OFFICER AND CIO COUNCIL.
34. ARKANSAS COMPUTER AND ELECTRONIC SOLID WASTE MANAGEMENT.
35. ARKANSAS MULTI-AGENCY INSURANCE TRUST FUND ACT.
36. ARKANSAS ECONOMIC OPPORTUNITY EXPANSION ACT.
37. BIOBASED PRODUCTS ACT OF 2005.
38. ARKANSAS AGRICULTURE DEPARTMENT.
39. GOVERNMENT EFFICIENCY AND ACCOUNTABILITY ACT. [REPEALED.]
40. ARKANSAS TASK FORCE ON HISPANIC AFFAIRS. [REPEALED.]
41. DAISY GATSON BATES HOLIDAY COMMITTEE.
42. HEALTH INFORMATION TECHNOLOGY.

CHAPTER 1

GENERAL PROVISIONS

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. PAPER REDUCTION.
3. MEMBERS OF EXECUTIVE BRANCH BOARDS AND COMMISSIONS.
4. ARKANSAS FINANCIAL TRANSPARENCY ACT.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

25-1-102. [Repealed.]

25-1-106. Evaluation of necessity of various commissions and boards.

25-1-110. Cost-effectiveness of state-owned vehicles.

25-1-112. Sexual offenses screened in criminal background checks.

25-1-113. Processing of requests for payments submitted to state agencies.

25-1-114. Incorporation of machine-readable privacy policies into websites.

25-1-115. Contact information on state agency documents.

SECTION.

25-1-116. State agency personal computer policy.

25-1-117. Demographic data report.

25-1-118. Electronic filing of reports.

25-1-119. Services and studies concerning mortality disparities.

25-1-120. Comprehensive cross-sector collaboration.

25-1-121. Naming of public buildings, structures, or facilities.

25-1-122. Alternative or secondary address for state communications through the mail — Law enforcement officers.

Effective Dates. Acts 2009, No. 1405, § 57: Apr. 9, 2009. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the people of the State of Arkansas overwhelmingly approved the establishment of lotteries at the 2008 General Election; that the Eighty-seventh General Assembly adopted Acts 605 and 606 of 2009 that implemented lotteries and made corresponding revisions to the Arkansas Academic Challenge Scholarship Program; that this bill amends provisions of Acts 605 and 606 of 2009 pertaining to lotteries and the Arkansas Academic Challenge Scholarship Program; and that the failure to immediately implement this

act will cause a reduction in lottery proceeds that will harm the educational and economic success of potential students eligible to receive scholarships under the act. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

25-1-102. [Repealed.]

Publisher’s Notes. This section, concerning state agency smoking policies, was repealed by Acts 2013, No. 1276, § 1.

The section was derived from Acts 1987, No. 462, §§ 1, 2.

25-1-106. Evaluation of necessity of various commissions and boards.

(a) Any part-time state board or commission that has not convened a meeting or has convened without a quorum for two (2) consecutive, regularly scheduled meeting dates within a two-year period shall vote to elect a new chair and vice chair.

(b)(1) If a part-time state board or commission has not convened a regularly scheduled meeting or has convened without a quorum for four (4) consecutive, regularly scheduled meeting dates within a two-year period, the Joint Performance Review Committee shall reevaluate the purpose, need, and effectiveness of the board or commission.

(2) The Joint Performance Review Committee shall report its findings and any recommendations concerning the existence of the board or commission to the Legislative Council no later than December 1 of each even-numbered year and shall draft legislation to implement the recommendations.

(c) No later than August 1 of each even-numbered year, each part-time board and commission shall provide the committee with a list of the regularly scheduled meeting dates for the board or commission for the previous two (2) fiscal years, including the attendance record of each member and the number of meetings that were convened.

History. Acts 1997, No. 1205, § 1;
1999, No. 1308, § 1; 2003, No. 1335, § 1.

25-1-110. Cost-effectiveness of state-owned vehicles.

(a) Each agency shall ensure that the purchase and continued ownership of state-owned vehicles is cost effective for the agency.

(b)(1) Each agency shall determine if the purchase or continued ownership of a vehicle is cost effective based upon a comparison between state vehicle ownership and private car mileage reimbursement break-even points, as established pursuant to regulations promulgated by the Department of Finance and Administration.

(2) The comparison shall be based upon the previous year's use of the state-owned vehicle.

(c) On June 1 of every year, each agency shall provide the department a report including:

- (1) The number of agency vehicles;
- (2) The mileage used on the agency vehicles;
- (3) Any private car mileage reimbursements; and
- (4) Justification for retention of all vehicles identified as underutilized.

(d) By September 1 of each year, the department shall provide each agency and the Legislative Council with recommendations concerning the continued ownership of state-owned vehicles by each agency.

(e) The provisions of this section do not apply to the Arkansas Lottery Commission, institutions of higher education, and vocational technical institutes.

History. Acts 2001, No. 1711, § 1; inserted "the Arkansas Lottery Commission" in (e) and made a related change.
2009, No. 1405, § 49.

Amendments. The 2009 amendment

25-1-112. Sexual offenses screened in criminal background checks.

Whenever a criminal background check is performed on a person under the provisions of any criminal background check requirement contained in the Code for employment, licensure, or any other purpose, the person may be disqualified for employment, licensure, or any other purpose for which the background check was conducted if it is determined that the person committed a violation of any sexual offense formerly proscribed under § 5-14-101 et seq. that is substantially equivalent to any sexual offense presently listed in § 5-14-101 et seq. and is an offense screened for in a criminal background check.

History. Acts 2003, No. 1393, § 1.

Cross References. Sexual offenses,
§ 5-14-101.

25-1-113. Processing of requests for payments submitted to state agencies.

(a) As used in this section, “state agency” means any department, agency, board, commission, office, or other authority of the state.

(b) A state agency that receives a properly prepared request for payment from a city or county owed payment for services or goods purchased by the state agency has twenty (20) working days to process the payment request, excluding time required for transmittal from one (1) person to another, if:

(1) The request for payment conforms with the provisions of the contract award and the laws of the State of Arkansas; and

(2) Funds are available.

(c) If a state agency contests the payment, then within the time specified for processing payment it shall notify the city or county that submitted the request:

(1) That the payment has been contested; and

(2) The reasons for the request’s being contested.

(d) The Chief Fiscal Officer of the State shall establish procedures for monitoring payments to cities and counties by state agencies.

History. Acts 2003, No. 1710, § 1.

25-1-114. Incorporation of machine-readable privacy policies into websites.

(a) Each unit of state and local government and each state agency that operates or maintains a website shall incorporate a machine-readable privacy policy into each of its websites no later than July 1, 2004.

(b) The privacy policy statement shall be published on the state’s website, local government’s website, or state agency’s website and for each statement shall include:

(1) A description of the data the unit of government or agency collects on its website and how the data will be used by the unit of government or agency;

(2) The type of data and the purposes for which data are shared with other entities;

(3) Whether the unit of government's or agency's data collecting and sharing practices are mandatory or allow a browser to opt in or opt out of those practices;

(4) An explanation that certain information collected by the governmental unit or agency is subject to disclosure under the Freedom of Information Act of 1967, § 25-19-101 et seq.;

(5) A link to or instructions for locating the website's policy reference file, which shall identify the uniform resource locator for the website's policy statements and shall indicate those portions of the website and the website's "cookies" that are covered by each statement; and

(6) A link to the website's human-readable privacy policy.

History. Acts 2003, No. 1713, § 1.

25-1-115. Contact information on state agency documents.

(a) The purpose of this section is to require each state agency to include a telephone number for inquiries or comments and, to the extent practicable, the name of a contact person on any communication, form, notice, announcement, publication, or other similar document from the state agency.

(b) This section shall not apply to communications, forms, notices, announcements, publications, or other similar documents in existence on August 12, 2005, but shall apply to such documents as they are created, revised, and reordered after August 12, 2005.

History. Acts 2005, No. 2263, § 1.

25-1-116. State agency personal computer policy.

(a) As used in this section, "state agency" means any department, agency, board, commission, office, or other authority of the state.

(b) The chief administrative officer of each state agency shall promulgate a policy that prohibits the integration of hardware, software, or peripherals owned by an authorized user with a state agency's network or workstation without the approval of the state agency's chief administrative officer or his or her designee.

History. Acts 2007, No. 339, § 1.

25-1-117. Demographic data report.

(a) A state agency, board, or commission that licenses or otherwise regulates a health profession shall procure demographic data regarding the health care workforce in this state, including without limitation:

- (1) The Arkansas Board of Podiatric Medicine;
- (2) The Arkansas Psychology Board;
- (3) The Arkansas Social Work Licensing Board;
- (4) The Arkansas State Board of Dental Examiners;
- (5) The Arkansas State Medical Board;
- (6) The Arkansas State Board of Pharmacy;
- (7) The Board of Examiners in Speech-Language Pathology and Audiology; and
- (8) The State Board of Optometry.

(b) Each state agency, board, or commission required to procure data under this section shall procure accurate and efficient collection of data, demographic, and other information by defining the following categories on licensure applications, including without limitation:

- (1) Age;
- (2) City and county of residence;
- (3) Educational institution of professional education and training;
- (4) Ethnicity;
- (5) Gender;
- (6) Place of birth; and
- (7) Race.

(c) Each state agency, board, or commission required to procure data under this section shall report the data on or before August 31 each year to:

- (1) The Arkansas Center for Health Improvement;
- (2) The Arkansas Minority Health Commission; and
- (3) The Department of Health.

History. Acts 2009, No. 1489, § 1.

25-1-118. Electronic filing of reports.

(a) As used in this section:

(1) "Entity of the state" means:

- (A) A state agency;
- (B) The Governor;
- (C) The Lieutenant Governor;
- (D) The Attorney General;
- (E) The Secretary of State;
- (F) The Auditor of State;
- (G) The Treasurer of State;
- (H) The Commissioner of State Lands;
- (I) The General Assembly; and

(J) A committee or subcommittee of the General Assembly, including without limitation the Legislative Council; and

(2) "State agency" means every department, division, office, board, commission, and institution of this state, including state-supported institutions of higher education.

(b) A state agency required by Arkansas law to file a report, including without limitation a written report, with an entity of the state shall:

- (1) File the report in electronic form; and
- (2)(A) Post the report on its Internet website, if applicable.
(B) This subdivision shall not apply if information within the report is protected from public disclosure by state or federal law.

History. Acts 2011, No. 742, § 1.

25-1-119. Services and studies concerning mortality disparities.

(a)(1) As used in this section, “Arkansas red counties” means those counties in which Arkansans who were born and are living have a life expectancy rate six (6) to ten (10) times less than the life expectancy of Arkansans who were born and are living in the county with the highest life expectancy.

(2) “Arkansas red counties” includes on the effective date of this subchapter:

- (A) Arkansas;
- (B) Chicot;
- (C) Crittenden;
- (D) Cross;
- (E) Dallas;
- (F) Desha;
- (G) Fulton;
- (H) Jackson;
- (I) Jefferson;
- (J) Mississippi;
- (K) Monroe;
- (L) Ouachita;
- (M) Perry;
- (N) Phillips;
- (O) Poinsett;
- (P) St. Francis;
- (Q) Sevier;
- (R) Union; and
- (S) Woodruff.

(b) The General Assembly finds:

(1) It is unacceptable for Arkansans born and living in one part of the state to have a life expectancy rate six (6) to ten (10) years less than Arkansans born and living in another part of the state;

(2) Complex factors operating at the levels of individuals, interpersonal networks, organizations, or communities influence disparities in health and healthcare; and

(3) Health and healthcare disparities not only are unacceptable, but also have human, economic, social, and developmental costs that affect all residents of the nation and the State of Arkansas.

(c)(1) Each state agency, board, and commission that receives state dollars or tobacco settlement funds intended to improve the quality of health in Arkansas is encouraged to provide its programs, services, and research in Arkansas red counties.

(2) Identified agencies, boards, and commissions whose scope of services encompasses the Arkansas red counties include without limitation, the:

- (A) Arkansas Center for Health Improvement;
- (B) Arkansas Department of Environmental Quality;
- (C) Department of Health;
- (D) Donald W. Reynolds Institute on Aging at the University of Arkansas for Medical Sciences;
- (E) Area Agencies on Aging;
- (F) Arkansas Biosciences Institute of the University of Arkansas for Medical Sciences;
- (G) Fay W. Boozman College of Public Health of the University of Arkansas for Medical Sciences; and
- (H) Partners for Inclusive Communities of the University Centers of Excellence in Developmental Disabilities Education, Research, and Service of the University of Arkansas for Medical Sciences.

(3)(A) The entities listed in subdivision (c)(2) of this section shall submit an annual report to the chair of the House Committee on Public Health, Welfare, and Labor, the chair of the Senate Committee on Public Health, Welfare, and Labor, and the Governor to be delivered on or before October 1 of each year.

(B) The annual report required under subdivision (c)(3)(A) of this section shall include without limitation a section that:

- (i) Describes services, programs, research, or any combination of services, programs, and research provided in the Arkansas red counties during the previous fiscal years;
- (ii) Accounts for expenditures, services, programs, research, or any combination of services, programs, and research provided in the Arkansas red counties during the previous fiscal year; and
- (iii) Provides recommendations toward improving health and healthcare in Arkansas red counties.

(d) The following entities shall work together to identify the red counties most in need of help with mortality disparities and shall make that data available to the public:

- (1) The Arkansas Center for Health Improvement;
- (2) The Arkansas Minority Health Commission;
- (3) The Arkansas Department of Environmental Quality;
- (4) The Department of Health; and
- (5) Fay W. Boozman College of Public Health of the University of Arkansas for Medical Sciences.

History. Acts 2011, No. 790, § 1.

25-1-120. Comprehensive cross-sector collaboration.

(a)(1) As used in this section, “Arkansas red counties” means those counties in which Arkansans were born and are living have a life expectancy rate six (6) to ten (10) years less than the life expectancy of

Arkansans who were born and are living in the county with the highest life expectancy.

(2) "Arkansas red counties" includes on the effective date of this subchapter:

- (A) Arkansas;
- (B) Chicot;
- (C) Crittenden;
- (D) Cross;
- (E) Dallas;
- (F) Desha;
- (G) Fulton;
- (H) Jackson;
- (I) Jefferson;
- (J) Mississippi;
- (K) Monroe;
- (L) Ouachita;
- (M) Perry;
- (N) Phillips;
- (O) Poinsett;
- (P) St. Francis;
- (Q) Sevier;
- (R) Union; and
- (S) Woodruff.

(b) The General Assembly finds that:

(1) Health is affected by a wide variety of social factors, including without limitation:

(A) The circumstances in which people are born, grow up, live, work, and age;

(B) Systems for dealing with illness and access to those systems; and

(C) Other factors, such as poverty, substance abuse, working conditions, unemployment, social support, nutritious foods, transportation, and housing;

(2) Complex factors affecting health operate at the levels of individuals, interpersonal networks, organizations, or communities that influence disparities in health and healthcare; and

(3) Collaboration between agencies and organizations is cost effective, increases awareness, and ensures programs and services provided are comprehensive.

(c)(1) Each state agency, board, and commission whose scope of services encompasses the red counties to date are encouraged to work collaboratively in the red counties to implement strategies that may include without limitation health screenings, education, awareness, outreach efforts, resource and service navigation, as well as other health and health care access-related initiatives toward achieving systems change.

(2) The following entities without limitation are encouraged to work together to plan, operate, and coordinate a comprehensive initiative to address the health and healthcare needs of the red counties:

- (A) The Arkansas Center for Health Improvement;
 - (B) The Arkansas Minority Health Commission;
 - (C) The Arkansas Department of Environmental Quality;
 - (D) The Department of Health;
 - (E) Fay W. Boozman College of Public Health of the University of Arkansas for Medical Sciences;
 - (F) Workforce Development Commission;
 - (G) Department of Higher Education;
 - (H) Arkansas State Highway and Transportation Department;
 - (I) University of Arkansas for Medical Sciences — Partners for Inclusive Communities;
 - (J) Arkansas Children's Hospital;
 - (K) University of Arkansas for Medical Sciences — Area Health Education Centers;
 - (L) Public safety organizations;
 - (M) Arkansas Optometric Association; and
 - (N) Area Agencies on Aging.
- (d)(1) The Office of Minority Health and Health Disparities of the Department of Health is designated to:
- (A) Organize, notify, and coordinate planning meetings of the entities encouraged under this section to work together to plan, operate, and coordinate a comprehensive initiative to address the health and healthcare needs of the red counties;
 - (B) Coordinate agreed-upon initiatives in selected counties annually;
 - (C) Assist in development of a standardized annual report format that will be used to report on the cross-sector comprehensive collaborative initiatives and the outcomes of those initiatives;
 - (D) Compile an annual report of comprehensive collaborative initiatives using the standardized format created under this subsection and submit the report to the Senate Committee on Public Health, Welfare, and Labor and House Committee on Public Health, Welfare, and Labor no later than October 1 of each year.
- (2) The first planning meeting under this subsection shall be held no later than October 1, 2011.
- (3) The first report under this subsection shall be submitted by October 1, 2012.

History. Acts 2011, No. 798, § 1.

25-1-121. Naming of public buildings, structures, or facilities.

(a) As used in this section, “public funds” means any funds, moneys, receivables, grants, investments, instruments, real or personal property, or other assets, liabilities, equities, revenues, receipts, or disbursements belonging to, held by, or passed through an entity of the state or a political subdivision of the state.

(b) A building, structure, or facility paid for in whole or in part with public funds shall not be named for an individual living at the time of

completion of the building, structure, or facility who, in the ten (10) years preceding the construction of the public building, structure, or facility:

(1) Was elected by qualified electors to a federal, state, county, or municipal office or held a federal, state, county, or municipal office; and

(2) Received a salary for his or her service in the federal, state, county, or municipal office.

(c) This section shall not apply to:

(1) A building, structure, or facility that concerns an individual living at the time of completion of the building, structure, or facility and has historical significance, including without limitation that individual's birthplace;

(2) The naming of a building, structure, or facility after an individual:

(A) Who is or has been a prisoner of war; or

(B) Is:

(i) At least seventy-five (75) years of age; and

(ii) Retired; or

(3) A building, structure, or facility for which at least fifty percent (50%) of the funds used to pay for the building, structure, or facility are private funds.

(d) This section shall not be construed to prevent an entity receiving public funds from placing an individual's name upon a commemorative object, including without limitation a brick, used in a building, structure, or facility, in exchange for a donation to the entity.

History. Acts 2013, No. 1225, § 2.

A.C.R.C. Notes. Acts 2013, No. 1225, § 1, provided: "Legislative intent.

"(a) The General Assembly finds:

"(1) The integrity of elections in this state is of the utmost importance; and

"(2) The General Assembly should pursue legislative measures that prevent incumbent candidates from having special

or unfair advantages in subsequent political contests.

"(b) The intent of this section is to regulate the naming of public buildings, structures, or facilities after certain individuals to prevent unfair advantages for incumbent candidates in future political contests."

25-1-122. Alternative or secondary address for state communications through the mail — Law enforcement officers.

(a) A person who is employed primarily as a law enforcement officer may elect to use an alternative or secondary address, such as a post office box, to receive all of his or her communications sent by a state agency through the mail.

(b) The secondary or alternative address must be in the same county and, where practicable, same voting precinct as the law enforcement officer's primary place of residence.

History. Acts 2013, No. 1514, § 1.

SUBCHAPTER 2 — PAPER REDUCTION

SECTION.

25-1-201. Legislative intent.

25-1-202. Distribution of reports to the General Assembly.

25-1-203. Distribution of other publications.

SECTION.

25-1-204. Publications to be included in agency budget.

25-1-205. Copies to be filed with the Legislative Council.

25-1-206. Definition of “state agency”.

Effective Dates. Acts 2009, No. 1405, § 57: Apr. 9, 2009. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the people of the State of Arkansas overwhelmingly approved the establishment of lotteries at the 2008 General Election; that the Eighty-seventh General Assembly adopted Acts 605 and 606 of 2009 that implemented lotteries and made corresponding revisions to the Arkansas Academic Challenge Scholarship Program; that this bill amends provisions of Acts 605 and 606 of 2009 pertaining to lotteries and the Arkansas Academic Challenge Scholarship Program; and that the failure to immediately implement this

act will cause a reduction in lottery proceeds that will harm the educational and economic success of potential students eligible to receive scholarships under the act. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

25-1-201. Legislative intent.

(a) It is the intent of the General Assembly to:

(1) Prohibit the excessive reproduction of state agency reports that are being written, printed, and distributed at significant public expense; and

(2) Provide for Internet publication as the primary means of publishing state agency reports.

(b) It is not the intent of the General Assembly to reduce the free flow of information between state government and the public. Rather, the intent is to reduce the use of state government publications for other than required informational purposes and to effect a reduction in the escalating public expense of writing, printing, and distributing state agency reports.

History. Acts 1999, No. 1276, § 1; 2013, No. 501, § 4.

Amendments. The 2013 amendment

rewrote (a); and deleted “unsolicited” preceding “state agency reports” in (b).

25-1-202. Distribution of reports to the General Assembly.

(a) Reports by state agencies that are required to be submitted to the General Assembly shall be submitted only to:

- (1) The Speaker of the House of Representatives;
- (2) The President Pro Tempore of the Senate;
- (3) The member of the General Assembly who was the lead sponsor of the legislation authorizing the preparation of the report; and
- (4) The Director of the Bureau of Legislative Research.

(b) A report required to be submitted to the General Assembly shall be filed in electronic form.

History. Acts 1999, No. 1276, § 2; added the (a) designation and made stylistic changes; and added (b).
2013, No. 501, § 5.

Amendments. The 2013 amendment

25-1-203. Distribution of other publications.

(a) A state agency shall not distribute a state publication except as provided in this section.

(b)(1) A state agency shall place a state publication on its website.

(2) The Department of Information Systems shall assist those state agencies requesting assistance in placing publications on the state agency's website.

(c) Upon request, a state agency shall provide an unbound, black-and-white copy of a state publication to a person.

(d)(1) A state agency shall compile a mailing list of persons requesting publications distributed by the state agency.

(2)(A) Before distributing a state publication, the state agency shall send by mail a card to each person on the mailing list requesting the person to return the card to the state agency if the person wishes to receive an unbound, black-and-white copy of the publication.

(B) The card shall include the address of the website on which the publication is located.

(C) Upon return receipt of a card, the state agency shall then send a copy of the publication to the person.

(e) This section does not apply to the following publications:

- (1) Public information pamphlets;
- (2) Promotional brochures;
- (3) Copies of legislative bills;
- (4) Copies of statutes, laws, and regulations;
- (5) Information disseminated to the press or requested pursuant to the Freedom of Information Act of 1967, § 25-19-101 et seq.;
- (6) Publications that are applications, instructions, or guidelines for complying with state or federal law, regulation, or policy;
- (7) Publications of the Division of Agriculture of the University of Arkansas;
- (8) Information, forms, and notices necessary to comply with state tax laws, driver's licensing laws, and motor vehicle registration and titling laws;

(9) Financial reports required by a:

(A) Governing board if the rules, procedures, or bylaws of the governing board as of January 1, 2013, required a printed financial report;

(B) Bond rating agency;

(C) Bond trustee; or

(D) Financial institution; and

(10) The "Arkansas Highways" magazine published by the Arkansas State Highway and Transportation Department.

(f) A state agency may distribute upon request an abstract that contains a description of reports submitted to the General Assembly and of any other information that is available.

(g)(1) Except as provided in subdivision (g)(3) of this section, on or before October 1 of each even-numbered year a state agency shall submit an electronic report to the Department of Finance and Administration containing the:

(A) Number of unbound, black-and-white publications the state agency distributed under this section in the past two (2) years; and

(B) The cost of producing the unbound, black-and-white publications distributed under this section in the past two (2) years.

(2)(A) The Department of Finance and Administration shall provide a report containing the information reported by state agencies under subdivision (g)(1) of this section by November 1 of each even-numbered year.

(B) The report shall identify the number of publications distributed and the cost of producing the publications for each individual state agency reporting under subdivision (g)(1) of this section.

(3) Subdivision (g)(1) of this section does not apply to the General Assembly or the divisions, commissions, and bureaus operating under the authority of the General Assembly.

History. Acts 1999, No. 1276, § 3; 2013, No. 501, § 6.

Amendments. The 2013 amendment rewrote the section.

25-1-204. Publications to be included in agency budget.

Each state agency shall include in its budget request a list of state publications that are required by statutory law and shall state in writing the reasons for the continued publication or distribution of its publications.

History. Acts 1999, No. 1276, § 4; 2013, No. 501, § 7.

substituted "Each" for "Beginning with the 1999-2000 fiscal year, each."

Amendments. The 2013 amendment

25-1-205. Copies to be filed with the Legislative Council.

(a) A state agency which publishes or distributes a state publication shall file an electronic copy of a publication with the Legislative Council

if the state agency has published or distributed more than one thousand (1,000) copies of the publication in the preceding calendar year.

(b) This section shall not apply to:

- (1) Copies of legislative bills;
- (2) Copies of statutes, laws, and regulations;
- (3) Information disseminated solely to the press;
- (4) Publications that are applications, instructions, or guidelines for complying with any state or federal law, regulation, or policy;
- (5) Promotional brochures and educational materials published by the Department of Parks and Tourism;
- (6) Publications of the University of Arkansas Cooperative Extension Service; and
- (7) Marketing and promotional information published by the Arkansas Economic Development Commission.

History. Acts 1999, No. 1276, § 5; 2013, No. 501, § 8. **Amendments.** The 2013 amendment added the (a) designation; in (a), substituted “A” for “Any”, substituted “an elec- tronic copy of a publication” for “a copy of the publication”; inserted the (b) designa- tion; and substituted “Economic Develop- ment Commission” for “Department of Economic Development” in (b)(7).

25-1-206. Definition of “state agency”.

As used in this subchapter, “state agency” means an agency, author- ity, board, bureau, commission, council, department, office, or officer of the state receiving an appropriation by the General Assembly, including without limitation a state-supported institution of higher education.

History. Acts 1999, No. 1276, § 6; 2009, No. 1405, § 50; 2013, No. 501, § 9. **Amendments.** The 2009 amendment rewrote the section. The 2013 amendment rewrote the sec- tion.

SUBCHAPTER 3 — MEMBERS OF EXECUTIVE BRANCH BOARDS AND COMMISSIONS

SECTION. 25-1-302. Members of specified executive branch boards and com- missions not to be mem- bers of the General Assem- bly.

Effective Dates. Acts 2003, No. 1473, § 74: July 1, 2003. Emergency clause pro- vided: “It is found and determined by the General Assembly of the State of Arkan- sas that this act includes technical cor- rects to Act 923 of 2003 which establishes the classification and compensation levels of state employees covered by the provi- sions of the Uniform Classification and Compensation Act; that Act 923 of 2003 will become effective on July 1, 2003; and that to avoid confusion this act must also be effective on July 1, 2003. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall be- come effective on July 1, 2003.”

25-1-302. Members of specified executive branch boards and commissions not to be members of the General Assembly.

(a) As soon as possible after April 13, 1999, the appointing authorities shall replace members of the General Assembly serving on executive branch boards and commissions identified below with persons who are not members of the General Assembly:

(1) Arkansas Alcohol and Drug Abuse Coordinating Council, § 20-64-1002;

(2) Arkansas Alternative Dispute Resolution Commission, § 16-7-102;

(3) [Repealed];

(4) Capitol Arts and Grounds Commission, § 22-3-502;

(5) Arkansas Child Abuse/Rape/Domestic Violence Commission, § 20-82-201;

(6) Supervisory Board for the Arkansas Crime Information Center, § 12-12-202;

(7) Arkansas Early Childhood Commission, § 20-78-501;

(8) State Interagency Council, § 20-14-508;

(9) Arkansas Entertainers Hall of Fame Board, § 13-9-101;

(10) Trauma Advisory Council, § 20-13-807;

(11) Martin Luther King, Jr. Commission, § 25-24-101;

(12) Mansion Advisory Council, § 22-3-806;

(13) Arkansas Minority Health Commission, § 20-2-102;

(14) Arkansas Natural and Cultural Resources Council, § 15-12-101;

(15) Arkansas Natural Heritage Commission, § 15-20-304;

(16) Arkansas Pygmalion Commission on Nontraditional Education, uncodified Act 1288 of 1993, as amended;

(17) Arkansas Rural Development Commission, § 15-6-104;

(18) [Repealed];

(19) Public School Motor Vehicle Self-Insurance Advisory Committee, § 6-21-711;

(20) Arkansas Science and Technology Authority, § 15-3-103;

(21) Arkansas Sentencing Commission, § 16-90-802;

(22) Arkansas Building Authority Council, § 22-2-106;

(23) State and Public School Life and Health Insurance Board, § 21-5-402;

(24) Temporary Assistance for Needy Families Oversight Board, § 20-76-105;

(25) Arkansas Public Transportation Coordination Council, § 27-3-103;

(26) Board of Visitors for the University of Arkansas at Pine Bluff, § 6-64-304;

(27) Workers' Compensation Commission, § 11-9-201; and

(28) State Board of Career Education, § 25-30-101.

(b) Hereafter, and notwithstanding any law to the contrary, no member of the General Assembly shall be appointed to any executive

branch board or commission identified in subsection (a) of this section. The President Pro Tempore of the Senate and the Speaker of the House of Representatives, in consultation with the Attorney General’s office, shall make a determination concerning any other board or commission having legislative members. If the President Pro Tempore of the Senate and the Speaker of the House of Representatives determine that legislative service on the board or commission would violate the Arkansas Supreme Court’s decision in *State Bd. of Workforce Educ. and Career Opportunities v. King*, 336 Ark. 409, 985 S.W.2d 731 (1999), they shall notify the appointing authority, who shall appoint a person who is not a member of the General Assembly as a replacement for the legislative member.

History. Acts 1999, No. 1414, § 2; 2001, No. 783, §§ 4, 5; 2003, No. 1473, § 63; 2007, No. 827, § 193; 2009, No. 1484, § 9.

A.C.R.C. Notes. School Motor Vehicle Self-Insurance Advisory Committee referred to in (a)(19) of this section does not exist. Section 6-21-711 lists this agency as

“Public Elementary and Secondary School Insurance Program and Public School Motor Vehicle Insurance Program Advisory Committee”.

Amendments. The 2009 amendment deleted (a)(24) and redesignated the subsequent subdivisions accordingly.

SUBCHAPTER 4 — ARKANSAS FINANCIAL TRANSPARENCY ACT

SECTION.

- 25-1-401. Title.
- 25-1-402. Legislative intent.
- 25-1-403. Definitions.
- 25-1-404. Duties of Department of Finance and Administration.

SECTION.

- 25-1-405. Cooperation by state agencies with Department of Finance and Administration — Report.

25-1-401. Title.

This subchapter shall be known and may be cited as the “Arkansas Financial Transparency Act”.

History. Acts 2011, No. 303, § 1.

25-1-402. Legislative intent.

The General Assembly finds that:

- (1) Information technology has evolved to allow unprecedented levels of accessibility to financial information;
- (2) Information technology allowing access to expenditure information via the Internet now exists and is available to state government; and
- (3) Access to expenditures on an ongoing and regular basis will:
 - (A) Assist citizens and members of the General Assembly in overseeing the operation of state government in Arkansas; and
 - (B) Allow for a higher degree of accountability and efficiency in the workings of all branches of state government.

History. Acts 2011, No. 303, § 1.

25-1-403. Definitions.

As used in this section:

(1)(A) “Expenditure data” means information provided by a state agency regarding the spending of public funds that adequately identifies the purpose, amount, payor, and vendor, if such disclosure is permissible under the Arkansas Freedom of Information Act of 1967, § 25-19-101 et seq., and federal laws or regulations.

(B) “Expenditure data” does not include expenses of pending litigation;

(2)(A) “State agency” means any agency, department, authority, board, commission, bureau, council, or other agency of the state excluding institutions of higher education.

(B) “State agency” includes without limitation:

(i) The offices of the Governor, Lieutenant Governor, Attorney General, Secretary of State, Treasurer of State, Auditor of State and Commissioner of State Lands;

(ii) Legislative commissions, bureaus, and offices;

(iii) Judicial offices;

(iv) Constitutional offices, commissions and departments that receive a state appropriation for the expenditure of state funds, special revenues, or federal funds; and

(v) The Arkansas Lottery Commission;

(3) “Vendor” means an entity that:

(A) Provides goods and services within its normal business operations;

(B) May provide similar goods and services to many different purchasers; and

(C) Operates in a competitive environment; and

(4) “Website” means a site on the Internet:

(A) Identifiable by a specific Uniform Resource Locator;

(B) Accessible to the public at no cost; and

(C) Requiring no information of the user.

History. Acts 2011, No. 303, § 1.

25-1-404. Duties of Department of Finance and Administration.

(a) The Department of Finance and Administration shall:

(1) Establish standards and criteria for each state agency to report financial expenditures;

(2) Develop and maintain a database of financial information as set forth in this subchapter; and

(3) Develop a website presenting expenditure data for each state agency that shall:

(A) Report expenditure data in a common format;

(B) Include expenditures of state government, whether held in the State Treasury or commercial bank accounts;

(C) Allow searches of financial data in common format; and

(D)(i) Be updated on a regular basis to present expenditure data for the current fiscal year and prior year's annual expenditures, starting with the 2013 fiscal year.

(ii) The website shall retain expenditure data for each state fiscal year, starting with the 2013 fiscal year, until ten (10) such years are available, after which the website shall retain at least ten (10) years of expenditure data.

(b) Revenue shall be reported at the state agency level by:

(1) The source of funding, including without limitation donations and gifts;

(2) General ledger codes as defined by rule of the department; and

(3) Year to date.

(c) A state agency shall report information on expenditures by:

(1) Budget classification;

(2) General ledger code as defined by rule of the department;

(3) Year to date; and

(4) Vendor.

(d) A state agency shall report information on compensation of state employees by:

(1) Agency;

(2) Employee name;

(3) Title;

(4) Position number; and

(5) Annual salary.

(e) A state agency shall report information on bonded indebtedness by the:

(1) Original obligation amount or principal;

(2) Original interest rate;

(3) Statutory authority for the debt;

(4) Issuance date and description, including without limitation whether the current issuance is an original issue or a reissue of indebtedness;

(5) Term of the obligation;

(6) Source of funding for repayment; and

(7) Remaining principal.

(f) Information regarding payments to city and county governments shall be provided in a manner prescribed by rule of the department.

(g) A state agency shall report information on contracts by the:

(1) Date of contract;

(2) Vendor;

(3) Estimated total contract value; and

(4) Type of contract, whether professional services, commodities, capital outlay, or other type of contract.

(h) The department may promulgate rules to implement this section, including without limitation rules concerning the reporting of additional information under this section.

History. Acts 2011, No. 303, § 1.

25-1-405. Cooperation by state agencies with Department of Finance and Administration — Report.

(a) Each state agency shall:

(1) Cooperate with the Department of Finance and Administration in meeting the requirements of this subchapter; and

(2) Take actions necessary to provide information under this subchapter.

(b)(1) The department shall report annually to the Legislative Council the name of each state agency failing to provide information under this subchapter.

(2) A copy of the report under subdivision (b)(1) of this section shall be posted on the website required by this subchapter immediately after presentation to the Legislative Council.

(c) The Arkansas Lottery Commission shall pay the costs of providing expenditure information for the commission in the common format determined by the department.

History. Acts 2011, No. 303, § 1.

CHAPTER 2

ADMINISTRATIVE DEPARTMENTS GENERALLY

SECTION.

25-2-107. Type 4 transfers.

25-2-106. Type 3 transfers.

A.C.R.C. Notes. Acts 2009, No. 1367, §§ 2, 3, provided: “SECTION 2. (a) The State Board of Registered Interior Designers, established by § 17-35-201 et seq., is abolished, and its powers and duties are transferred to the Arkansas State Board of Architects, Landscape Architects, and Interior Designers by a type 3 transfer under § 25-2-106.

“(b) For purposes of this act, the Arkansas State Board of Architects, Landscape Architects, and Interior Designers shall be considered a principal department established by Acts 1971, No. 38.

“SECTION 3. (a) The Arkansas State Board of Landscape Architects, established by § 17-36-201 et seq., is abolished, and its powers and duties are transferred to the Arkansas State Board of Architects, Landscape Architects, and Interior Designers by a type 3 transfer under § 25-2-106.

“(b) For purposes of this act, the Arkansas State Board of Architects, Landscape Architects, and Interior Designers shall be considered a principal department established by Acts 1971, No. 38.”

25-2-107. Type 4 transfers.

(a) Under this act, a type 4 transfer means the transferring of all or part of an existing department, institution, or other agency to a principal department established by this act in the following circumstances:

(1) When all or part of any department, institution, or other agency is transferred to a principal department under a type 4 transfer, the board, commission, or other governing body of the transferred department, institution, or other agency is retained and shall continue to exercise its statutory authority, powers, duties, and functions;

(2) The director of the department, institution, or other agency shall be nominated by the board or commission or governing body of the transferred department, institution, or other agency subject to confirmation by the Governor. The director shall serve at the pleasure of the Governor; and

(3) All records, personnel, property, unexpended balances of appropriations, allocations, or other funds, including the functions of budgeting and purchasing, are transferred to the principal department.

(b) Following a type 4 transfer, the members of any statutory board or commission so transferred and their successors shall continue to be selected in the manner and serve for the terms provided by the statutes applicable to the board or commission as such statutes may from time to time be amended.

History. Acts 1971, No. 38, § 2; 1985, No. 348, § 8; A.S.A. 1947, § 5-902; Acts 2011, No. 603, § 1.

Amendments. The 2011 amendment deleted “except that any rules, regula-

tions, and standards issued by the board, commission, or other governing body shall be subject to written approval by the Governor” at the end of (a)(1).

CHAPTER 3

DEPARTMENT OF ARKANSAS HERITAGE

SECTION.

25-3-104. Arkansas Natural and Cultural Heritage Advisory Committee.

SECTION.

25-3-107. [Repealed.]

25-3-104. Arkansas Natural and Cultural Heritage Advisory Committee.

(a) There is established an Arkansas Natural and Cultural Heritage Advisory Committee whose members shall consist of:

- (1) The Director of the Department of Arkansas Heritage;
 - (2) The Executive Director of the Arkansas Economic Development Commission;
 - (3) The Director of the Arkansas State Highway and Transportation Department;
 - (4) The Director of the Department of Health;
 - (5) The Director of the Department of Parks and Tourism;
 - (6) The Director of the Arkansas State Game and Fish Commission;
 - (7) A person appointed by the Governor;
 - (8) A person appointed by the President Pro Tempore of the Senate;
- and

(9) A person appointed by the Speaker of the House of Representatives.

(b)(1) Except as provided in subdivision (b)(2) of this section, persons appointed to the advisory committee by the Governor, President Pro Tempore of the Senate, and the Speaker of the House of Representatives shall serve terms of three (3) years.

(2) At the first meeting of the advisory committee after the effective date of this act, members appointed to the advisory committee by the Governor, Speaker of the House of Representatives, or President Pro Tempore of the Senate shall draw lots to stagger terms so that:

(A) One (1) member shall serve a term of one (1) year;

(B) One (1) member shall serve a term of two (2) years; and

(C) One (1) member shall serve a term of three (3) years.

(c) The advisory committee shall elect from its membership a chair and vice-chair.

(d) A vacancy on the advisory committee in the positions appointed by the Governor, President Pro Tempore of the Senate, and the Speaker of the House of Representatives shall be filled by the appointing authority for the unexpired portion of the term in which it occurs.

(e) A majority of the total membership of the advisory committee constitutes a quorum.

(f) Members of the advisory committee appointed by the Governor, President Pro Tempore of the Senate, and Speaker of the House of Representatives may receive expense reimbursement and stipends under § 25-16-901 et seq. as allowed by law.

History. Acts 1975, No. 1001, § 5; A.S.A. 1947, § 5-925; Acts 2011, No. 896, § 3.

Amendments. The 2011 amendment rewrote the section.

25-3-106. Publication Development and Resale Revolving Fund.

A.C.R.C. Notes. Acts 2013, No. 932, § 34, provided: "PUBLICATION DEVELOPMENT AND RESALE. The Department of Arkansas Heritage is hereby authorized to make fund transfers from the Natural & Cultural Resources Historic Preservation Fund or other funds established from federal or non-federal grants to the Publication Development and Resale Revolving Fund to use to develop and

purchase additional publications for resale after seeking prior review by the Arkansas Legislative Council. In no case shall the fund transfers exceed twenty-five thousand dollars (\$25,000) in any fiscal year.

"The provisions of this section shall be in effect only from July 1, 2013 through June 30, 2014."

25-3-107. [Repealed.]

Publisher's Notes. This section, concerning restriction on printing expenditures, was repealed by Acts 2013, No.

1276, § 2 The section was derived from Acts 1989 (1st Ex. Sess.), No. 9, § 52.

CHAPTER 4

DEPARTMENT OF INFORMATION SYSTEMS

SECTION.

- 25-4-102. Legislative findings and declaration of intent.
- 25-4-103. Definitions.
- 25-4-104. Department of Information Systems.
- 25-4-105. Department of Information Systems — General powers and duties.
- 25-4-106. Reporting requirements.
- 25-4-107. [Repealed.]
- 25-4-108. Department of Information Systems — Working groups.
- 25-4-109. Information technology centers.
- 25-4-110. Information technology — Planning.

SECTION.

- 25-4-111. Information technology — Prerequisites.
- 25-4-112. Application to educational institutions.
- 25-4-114. Contracts and agreements for information technology.
- 25-4-119. Budget procedures.
- 25-4-121. Department of Information Systems Revolving Fund.
- 25-4-122. Reserve for equipment acquisition — Loans.
- 25-4-124. Yearly computation of expenses — Disposition of surplus funds.
- 25-4-125. State Broadband Manager.

Effective Dates. Acts 2003, No. 1627, § 15: July 1, 2003. Emergency clause provided: “It is found and determined by the General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 2003 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 2003 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 2003.”

Acts 2007, No. 751, § 38: July 1, 2007. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act dissolves and transfers the duties of the Executive Chief Information Officer, Chief Information Officer, and Office of Information Technology; and that dissolving the offices at the beginning of the state’s fiscal year will result in a more efficient transfer

of responsibilities and funds. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2007.”

Acts 2009, No. 1405, § 57: Apr. 9, 2009. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the people of the State of Arkansas overwhelmingly approved the establishment of lotteries at the 2008 General Election; that the Eighty-seventh General Assembly adopted Acts 605 and 606 of 2009 that implemented lotteries and made corresponding revisions to the Arkansas Academic Challenge Scholarship Program; that this bill amends provisions of Acts 605 and 606 of 2009 pertaining to lotteries and the Arkansas Academic Challenge Scholarship Program; and that the failure to immediately implement this act will cause a reduction in lottery proceeds that will harm the educational and economic success of potential students eligible to receive scholarships under the act. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by

the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by

the Governor and the veto is overridden, the date the last house overrides the veto."

25-4-101. Title.

A.C.R.C. Notes. This section formerly used the catchline "Definitions." That catchline is now being used by § 25-4-103.

25-4-102. Legislative findings and declaration of intent.

(a) The General Assembly finds and declares information and information resources to be strategic assets of the State of Arkansas and that procedures must be established to ensure that:

- (1) Information resources are used in an efficient manner;
- (2) Departmental resources are used unless an exception is authorized;
- (3) Information is administered and shared, consistent with requirements for security, privacy, and confidentiality;
- (4) Information technology acquisitions meet state needs and are consistent with coordinated efforts to maximize standardization and cost effectiveness;
- (5) State officials have timely access to information in useful forms; and

(6) The Department of Information Systems complies with applicable state and federal statutory and regulatory provisions.

(b) The General Assembly further declares its intent to create a state agency to:

- (1) Provide design and management services for the state's core information technology infrastructures;
- (2) Provide information technology services;
- (3) Implement appropriate technologies to exchange and share information; and
- (4) Develop technical standards and specifications and provide technical leadership and guidance to support the state's enterprise architecture.

(c) It is also the intent of the General Assembly that the department achieve certain objectives that will better support information technology utilization by other state agencies. These objectives are to:

- (1) Implement increased capabilities for communication and exchange of information; and
- (2) Develop and publish mechanisms for more timely acquisition of information technology.

(d)(1) The General Assembly further finds and determines that:

(A) Information technology services are readily available in the private sector;

(B) The public interest would be well served by competition for the provision of such services to the state;

(C) Public-private partnerships or joint ventures for the provision of such services may be appropriate in certain instances; and

(D) Emphasis will be given to encouraging and enabling competition among:

(i) Suppliers of such services whenever possible in the administration of this chapter; and

(ii) Women-owned and minority-owned suppliers of such services whenever possible in the administration of this chapter.

(2) The department shall consider in the development of the department plan and the Joint Committee on Advanced Communications and Information Technology shall emphasize in its recommendations and policies the availability in the private sector of information technology resources upon a competitive bid basis with a view to assuring the state of the highest reasonable quality of resources at the lowest reasonable cost.

(e)(1) In exercising its authority under § 25-4-105, the department shall competitively procure information technology except as provided in this subsection.

(2) The department is not authorized by § 25-4-105 to provide information technology services, including telecommunications and broadband services, to the general public, other than nongovernmental first responder entities, in competition with private sector telecommunications and cable communications providers.

(3) Customers of the department are not authorized to use information technology facilities and services provided by the department to provide telecommunications and broadband services to the general public in competition with private sector telecommunications and cable communications providers.

History. Acts 1977, No. 884, § 24; A.S.A. 1947, § 5-1417; Acts 1997, No. 914, § 2; 2001, No. 1722, § 1; 2005, No. 1999, § 1; 2007, No. 751, § 10; 2009, No. 648, § 1.

Amendments. The 2009 amendment deleted “subject to the written approval of the Chief Fiscal Officer of the State” following “architecture” in (b)(4).

25-4-103. Definitions.

As used in this chapter:

(1) “Application” means a separately identifiable and interrelated set of information technology resources that allows information processing to support specifically defined objectives;

(2) “Chief Technology Officer” means the Director of the Department of Information Systems;

(3) “Core information technology infrastructure” means the state data, state network and application interfaces, state security, and disaster recovery;

(4) “Customer” means a state agency, other governmental entity, or nongovernmental first responder entity that purchases or uses services under this chapter;

(5) "Equipment" means the machines, devices, and transmission facilities used in information processing, including computers, word processors, terminals, telephones, cables, software, and related services;

(6) "Information processing" means the electronic capture, collection, storage, manipulation, transmission, retrieval, and presentation of information in the form of data, text, voice, or image and includes telecommunications and office automation functions;

(7) "Information technology" means any component related to information processing and wired and wireless telecommunications, including data processing and telecommunications hardware, software, services, planning, personnel, facilities, and training;

(8) "Information technology resources" means the procedures, equipment, and software that are designed, built, operated, and maintained to collect, record, process, store, retrieve, display, and transmit information, and the associated personnel, including consultants and contractors;

(9) "Network infrastructure" means the shared portions of the state's telecommunications transmission facilities, including all transmission lines and all associated equipment and software components necessary for the management and control of the state network;

(10) "Nongovernmental first responder entity" means state and law enforcement personnel, fire department personnel, and emergency medical personnel who will be deployed to bioterrorism attacks, terrorist attacks, catastrophic or natural disasters, and other emergencies;

(11) "Other governmental entities" means state-elected constitutional officers and their staffs, the Supreme Court and the Administrative Office of the Courts, the General Assembly or its committees or staffs, the Arkansas State Highway and Transportation Department, the Arkansas State Game and Fish Commission, the federal government, cities, counties, municipalities, public school districts, and other publicly funded governmental entities;

(12) "Project" means a program to apply information technology resources to functions within or among elements of a state agency that ideally is characterized by well-defined parameters, specific objectives, common benefits, planned activities, a scheduled completion date, and an established budget with a specified source of funding;

(13) "Project management" means principles, practices, and techniques applied to lead projects and teams and the control of project schedules, costs, and performance risks with the goal of satisfying customers' requirements;

(14) "Public instrumentality" means any statutorily created entity charged with the responsibility of providing information or services through the use of information technology;

(15) "State agencies" means all state departments, boards, and commissions but shall not include the Arkansas Lottery Commission, the elected constitutional officers and their staffs, the General Assembly and its committees and staffs, or the Supreme Court and the

Administrative Office of the Courts, and public institutions of higher education with respect to academic, research, healthcare, and existing information technology applications and underlying support therefor;

(16) "State enterprise architecture" means a description of the elements of business processes and supporting technologies, policies, standards, procedures, solutions, and infrastructures that:

(A) Makes up an enterprise; and

(B) Documents how the components described in this subdivision (16) relate to one another, and the principles that govern their design and evolution over time;

(17) "Telecommunications" means all forms of communications devices and transport media for the conveyance by electronic or electrical means of voice, words, data, signals, or images; and

(18) "Working group" means a group of subject matter experts convened for the purpose of collaborating and devising strategies.

History. Acts 1977, No. 884, § 2; A.S.A. 1947, § 5-1402; Acts 1997, No. 914, § 3; 2001, No. 1722, § 2; 2005, No. 1999, § 2; 2007, No. 751, § 11; 2009, No. 648, § 2; 2009, No. 1405, § 51.

Amendments. The 2009 amendment by No. 648 deleted (5), and redesignated

the subsequent subdivisions accordingly; inserted "and other publicly funded governmental entities" in (12); rewrote (16); and made related changes.

The 2009 amendment by No. 1405 inserted "the Arkansas Lottery Commission" in (15).

25-4-104. Department of Information Systems.

(a) There is established within the executive department of government a Department of Information Systems.

(b)(1) The department shall be headed by a director to be appointed by the Governor, subject to confirmation by the Senate in the manner provided by law, and shall serve at the pleasure of the Governor.

(2) The director shall be a person who, by education and training, has technical knowledge and management experience in information technology-related equipment, systems, and services.

(3) The director shall qualify by filing the oath of office required in the Constitution of this state with the Secretary of State.

(c) The director may establish divisions and the organizational structure deemed necessary and appropriate for the efficient performance of the duties imposed under the provisions of this chapter, provided the organizational structure of the department shall conform to the positions authorized and limitations provided therefor in the biennial appropriation of the department.

(d) The director shall appoint the deputy and division directors and the professional, technical, and clerical assistants and employees as necessary to perform the duties imposed by this chapter. All employees of the department shall be employed by and serve at the pleasure of the director.

(e) The director shall report to the Governor any matters relating to abuses of this chapter.

(f) The director shall recommend statutory changes to the Governor.

History. Acts 1977, No. 884, § 3; A.S.A. 1947, § 5-1403; Acts 1997, No. 914, § 4; 2001, No. 1722, § 3; 2007, No. 751, § 12.

25-4-105. Department of Information Systems — General powers and duties.

(a)(1) The Department of Information Systems shall be vested with all the powers and duties necessary to administer the department and to enable it to carry out fully and effectively the regulations and laws relating to the department.

(2) The department's powers and duties relate to information technology and include without limitation:

(A) Conceptualizing, designing, developing, building, and maintaining common information technology infrastructure elements used by state agencies and governmental entities;

(B) Providing information technology services to state agencies, other governmental entities, nongovernmental first responder entities, and other quasi-governmental entities;

(C) Entering into contracts with state agencies, other governmental entities, and nongovernmental first responder entities for the purpose of providing information technology services;

(D)(i) Establishing fair and reasonable schedules of rates or fees to be paid by customers that are provided service to enable the department to recover all allowable costs of providing the services as provided in this chapter.

(ii) The same rate or fee structure will apply to all customers receiving services;

(E)(i) Establishing estimated billing rates to be developed for a period to coincide with the budgeting process.

(ii) The department shall have the authority to adjust billing as necessary to effect compliance with applicable state and federal statutory and regulatory provisions.

(iii) Billing adjustments shall be subject to the approval of the Chief Fiscal Officer of the State and review by the Legislative Council;

(F) Acquiring information technology on behalf of state agencies, the cost of which shall be recovered through customer billings or through direct funding;

(G) Promulgating rules that are necessary for efficient administration and enforcement of the powers, functions, and duties of the department as provided in this chapter;

(H) Developing a departmental plan to support the goals and objectives set forth for it in the state information technology plans and strategies;

(I) Implementing systems to ensure the security of state data and state data processing assets, to provide for disaster recovery and continuity of operations to the state agencies served, and to recover its costs from the customers benefited;

(J) Performing any additional powers, functions, and duties that are necessary and appropriate for the proper administration of the provisions of this chapter;

(K) Providing a State Cyber Security Office to monitor information resource security issues, coordinating all security measures that could be used to protect resources by more than one (1) governmental entity, and acting as an information technology resource to other state agencies;

(L) Assisting in the development of an information technology security policy for state agencies;

(M) Developing the information technology security policy for state agencies;

(N) Advising agencies in acquiring information technology service;

(O) Developing the information technology policies, standards, and specifications for state agencies and ensuring agencies' compliance with those policies, procedures, and standards;

(P) Participating in the development of information technology state contracts, including without limitation the identification of requirements, contract negotiation, and vendor evaluation;

(Q) With respect to their technology functions and applications, all state departments, boards, commissions, and public institutions of higher education, consulting and cooperating with the Department of Information Systems in the formation and implementation of security policies for the state core information technology infrastructure;

(R) Developing a state information technology plan that shall establish a state-level mission, goals, and objectives for the use of information technology;

(S) Identifying and establishing information technology solutions that can support more than one (1) agency in providing governmental services;

(T) Advising agencies regarding information technology contracts and agreements;

(U) Developing policies to promote and facilitate electronic access to government information and interoperability of information systems; and

(V) Reviewing and approving agencies' information technology plans and requests.

(b) This chapter shall not be construed to deprive, transfer, limit, or in any way alter or change any of the powers vested in the board of trustees of any institution of higher education under existing constitutional and statutory provisions.

History. Acts 1977, No. 884, § 5; A.S.A. 1947, § 5-1405; Acts 1997, No. 914, § 5; 2001, No. 1722, § 4; 2005, No. 1999, § 3; 2007, No. 751, § 13; 2009, No. 648, § 3.

A.C.R.C. Notes. Acts 2013, No. 1201, § 11, provided: "GIFTS, GRANTS AND DONATIONS. The Director may accept on

behalf of the Department of Information Systems, from any source, the donation of gifts, grants, cash, bequeaths, devices, donations, real or personal property and equipment for the establishment, maintenance, operations, or improvement of broadband services, enhancements and

grants.”

Acts 2013, No. 1443, § 75, provided: “INNOVATION AND PROJECT DEVELOPMENT FUND TRANSFERS. The Department of Information Systems is a cost recovery agency subject to the requirements of the United States Office of Management and Budget Circular A-87 Cost Principles for State, Local and Indian Tribal Government (A-87) and Cost Principles for Developing Cost Allocation Plans and Indirect Cost Rates for Agreements with the Federal Government Implementation Guide for the Office of Management and Budget Circular A-87 (ASMBC-10). To comply with these federal rules, it is necessary to establish an Innovation and Project Development appropriation and general revenue fund account within the Department of Finance and Administration Disbursing Officer for the Department of Information Systems. This fund shall be used for state enterprise innovation projects that would enhance the technology operations of the State that cannot be cost allocated to

federal programs. The Department of Information Systems will maintain documentation for projects billed for these purposes. Fund transfers may be made from the General Revenue Fund Account, upon the approval of the Chief Fiscal Officer of the State and prior review of the Arkansas Legislative Council or Joint Budget Committee, to reimburse the Department of Information Systems for the amounts billed.”

Amendments. The 2009 amendment subdivided the introductory language of (a); inserted “and other quasi-governmental entities” in (a)(2)(2); deleted “two-year” preceding “period” in (a)(2)(5)(A); deleted “and regulations” following “rules” in (a)(2)(7); substituted “Providing a State Cyber Security Office to monitor” for “Monitoring” in (a)(2)(11); rewrote (a)(2)(15); deleted “as requested by a state agency” following “contracts” in (a)(2)(16); substituted “Developing” for “Assisting in the development of” in (a)(2)(18); inserted (a)(2)(19) through (a)(2)(22); and made related and minor stylistic changes.

25-4-106. Reporting requirements.

(a)(1) The Director of the Department of Information Systems will report periodically to the Joint Committee on Advanced Communications and Information Technology regarding the status of the Department of Information Systems’ information technology responsibilities in state government.

(2) The director may report any factors that are outside the scope of the department but are deemed to inhibit or to promote the department’s responsibilities.

(b)(1) By October 31, January 31, April 30, and July 31 of each fiscal year, the director shall compile and submit a report to the:

(A) Legislative Council, if submitted between regular sessions of the General Assembly;

(B) Joint Budget Committee, if submitted during a session of the General Assembly; and

(C) Joint Committee on Advanced Communications and Information Technology.

(2) The report shall:

(A) Detail all requests from state agencies, boards, and commissions for advice regarding information technology planning, implementation, installation, rates or fees, utilization of products, services, and integrations or upgrades to be added to all existing technology plans; and

(B) Provide a full report of all corresponding recommendations made by the department to the requesting state agencies, boards, and commissions.

(3) The report shall include:

(A) The name of the state agency, board, or commission requesting the advice;

(B) The name and scope of the project for which advice is being sought;

(C) The type of advice sought, for example, technical, product or service utilization, planning, implementation, installation, integration, or upgrades;

(D) A detailed explanation of all recommendations provided by the department;

(E) How the recommendation fits into the information technology plan of the agency, board, or commission;

(F) How the recommendation fits into the state's information technology plan and state enterprise architecture; and

(G) Other information as may be useful for policy making decisions by the Legislative Council or the Joint Committee on Advanced Communications and Information Technology.

History. Acts 1977, No. 884, § 6; A.S.A. 1947, § 5-1406; Acts 1997, No. 914, § 6; 2001, No. 1722, § 5; 2003, No. 1627, § 12; 2007, No. 751, § 14; 2009, No. 648, § 4.

A.C.R.C. Notes. Acts 2013, No. 1201, § 9, provided: "REPORTING REQUIREMENTS.

"(a)(1) The Director of the Department of Information Systems will report periodically to the Joint Committee on Advanced Communications and Information Technology and the Executive Chief Information Officer regarding the status of the Department of Information Systems' information technology responsibilities in state government.

"(2) The director will forward to the joint committee any statutory changes that the department may recommend sufficiently in advance of the convening of the session of the General Assembly.

"(3) The director may report any factors that are outside the scope of the department but are deemed to inhibit or to promote the department's responsibilities.

"(b)(1) By October 31, January 31, April 30, and July 31 of each fiscal year, the Director of the Department Information Systems shall compile and submit a report to:

"(A) The Arkansas Legislative Council, if submitted between regular sessions of the General Assembly;

"(B) The Joint Budget Committee, if submitted during a session of the General Assembly; and

"(C) The Joint Committee on Advanced Communications and Information Technology.

"(2) The report shall:

"(A) Detail all requests from state agencies, boards, and commissions for advice regarding information technology planning, implementation, installation, rates or fees, utilization of products, services, and integrations or upgrades to be added to all existing technology plans; and

"(B) Provide a full report of all corresponding recommendations made by the Department of Information Systems to the requesting state agencies, boards, and commissions.

"(3) The report shall include:

"(A) The name of the state agency, board, or commission requesting the advice;

"(B) The name and scope of the project for which advice is being sought;

"(C) The type of advice sought, for example: technical, product or service utilization, planning, implementation, installation, integration, or upgrades;

“(D) A detailed explanation of all recommendations provided by the Department of Information Systems;

“(E) How the recommendation fits into the information technology plan of the agency, board, or commission;

“(F) How the recommendation fits into the state’s information technology plan and shared technical architecture; and

“(G) Other information as may be useful for policy making decisions by the

Legislative Council or Joint Committee on Advanced Communications and Information Technology.”

Amendments. The 2009 amendment deleted (a)(2) and redesignated the subsequent subdivision accordingly; and substituted “state enterprise” for “shared technical” in (b)(3)(F).

25-4-107. [Repealed.]

Publisher’s Notes. This section, concerning Department of Finance and Administration general powers and duties, was repealed by Acts 2009, No. 648, § 5.

The section was derived from Acts 1977, No. 884, § 8; A.S.A. 1947, § 5-1408; Acts 1997, No. 914, § 7; 2005, No. 1999, § 4; 2007, No. 751, § 15.

25-4-108. Department of Information Systems — Working groups.

(a) The Director of the Department of Information Systems may appoint working groups as necessary for specific purposes related to information technology coordination.

(b) Working group membership shall be determined by the director.

(c) Each working group shall establish a timeline for completion of its charge to accomplish performance-driven results.

(d) Working groups shall meet at least quarterly to achieve their assigned charges.

History. Acts 1977, No. 884, § 8; 1979, No. 820, § 2; 1985, No. 463, § 1; A.S.A. 1947, § 5-1408; Acts 1997, No. 914, § 8; 2005, No. 1999, § 4; 2007, No. 751, § 16.

25-4-109. Information technology centers.

(a) The Department of Information Systems is authorized to establish, maintain, and operate information technology centers and, in connection therewith, to rent, purchase, install, operate, and maintain information technology for state agencies as authorized in this chapter.

(b) The department is authorized to enter into contracts or agreements with state agencies for the purpose of providing information technology.

(c) State agencies are authorized to enter into any contracts with the department or its successor that may be necessary or desirable to effectuate the purposes and policies of this chapter or for maximum utilization of facilities and services that are the subject of this chapter.

(d) Agencies shall use the core information technology infrastructure.

(e) The department is authorized to enter into agreements and contracts with public utilities for telecommunications service.

(f) The information technology centers operated by the department shall be made available to all state agencies which fall within economical and feasible boundaries.

(g) Agencies shall use project management for designated activities defined as a project.

History. Acts 1977, No. 884, § 8; 1979, 1947, § 5-1408; Acts 1997, No. 914, § 9; No. 820, § 2; 1985, No. 463, § 1; A.S.A. 2001, No. 1722, § 6; 2005, No. 1999, § 5.

25-4-110. Information technology — Planning.

(a) The Department of Information Systems shall submit status reports annually or when requested to the Joint Committee on Advanced Communications and Information Technology.

(b)(1) Each state agency shall develop a biennial information technology plan that establishes state agency goals, objectives, and policies regarding the development and use of information technology.

(2)(A) Each state agency shall specifically include a policy regarding the use of the Internet.

(B) A statement of the agency's policy regarding the use of the Internet shall include:

(i) The penalties for violations of the agency's Internet policy;

(ii) The number of employees and computers that have access to the Internet and the percentage of those employees and computers to the total number of employees and computers;

(iii) The needs of the agency and how those needs relate to the use of the Internet; and

(iv) The responsibilities of the agency's employees as those responsibilities relate to the efficient and responsible use of the Internet.

(3) Plans may be updated by agencies in a timely manner to remain current and must accommodate changes in the evolving state information technology plan and standards.

(c) The Department of Information Systems shall distribute criteria, elements, form, and format for agency plans. Plans may include, but not be limited to, the following:

(1) A statement of the agency's mission, goals, and objectives for information technology;

(2) Goals and objectives for achieving electronic access to agency records, information, and services;

(3) Consideration of a variety of information technologies, including those that help transcend geographic locations, standard business hours, economic conditions of users, and disabilities;

(4) Compliance with the Freedom of Information Act of 1967, § 25-19-101 et seq.;

(5) An explanation of how the state agency's mission, goals, and objectives for information technology support and conform to the state information technology plan developed by the office;

(6) An implementation strategy to include:

(A) Annual implementation objectives of the plan;

(B) Methods to educate both state employees and the public in the effective use of access technologies; and

(C) Agency activities to increase electronic access to public records and information to be implemented within available resources and existing state agency planning processes;

(7) Projects and resources required to meet the objectives of the plan;

(8) Estimated schedules and funding required to implement identified projects;

(9) An evaluation of the agency's performance relating to information technology;

(10) An assessment of progress made toward implementing the agency information technology plan;

(11) A discussion of progress toward electronic access to public information and enabling citizens to have two-way interaction for obtaining information and services from state agencies; and

(12) An inventory of state agency information technology.

(d)(1) Plans developed or updated shall be submitted to the Department of Information Systems.

(2) The department may reject, require modification to, or approve plans as deemed appropriate.

(3) Plans shall be modified by the state agency as necessary.

(e)(1) Plans developed or updated by public instrumentalities shall be submitted for review to the Joint Committee on Advanced Communications and Information Technology.

(2) The committee may seek the assistance of the Department of Information Systems in conducting this review.

(3) Plans shall be modified by the public instrumentality as necessary.

History. Acts 1977, No. 884, § 9; A.S.A. 1947, § 5-1409; Acts 1997, No. 914, § 10; 2001, No. 1287, § 1; 2001, No. 1722, § 7; 2007, No. 751, § 17; 2009, No. 648, § 6.

Amendments. The 2009 amendment deleted (a)(1) and (b), subdivided (d) and (e), and redesignated accordingly; substituted

"status reports annually or when requested" for "monthly status reports" in (a); substituted "Information Systems" for "Finance and Administration" in the introductory language of (c) and in (d)(1) and (e)(2); and made a minor stylistic change.

25-4-111. Information technology — Prerequisites.

(a) Unless the agency first receives approval for a plan or an updated plan as provided for under § 25-4-110, a state agency shall not:

(1) Acquire by purchase or lease any new or additional information technology; or

(2) Enter into any contract for information technology.

(b) If an agency desires to acquire information technology not part of an information technology plan approved under § 25-4-110, the requesting agency shall submit a waiver request to the Director of the Department of Information Systems that includes:

(1) Identification of necessary additional services or improvements in information technology;

(2) Relationship of the information technology improvements or additions to the overall goals of the agency;

(3) Resources needed to provide the additional services or improvements; and

(4) Measurement and evaluation criteria.

(c)(1) Upon evaluation of the waiver request, the Director of the Department of Information Systems shall notify the agency in writing of his or her approval or rejection of the request and his or her reasons.

(2) The Director of the Department of Information Systems shall make his or her evaluation in a timely manner. If the Director of the Department of Information Systems requires more than thirty (30) days to complete the evaluation, he or she shall report in writing to the Governor his or her reasons for the delay in completion.

(3) If the Director of the Department of Information Systems rejects a request for a waiver, a state agency shall not make any expenditure of public funds for the acquisition or expansion of information technology equipment or services.

(4) If the Director of the Department of Information Systems determines that the agency needs additional information technology resources, he or she may:

(A) Authorize the agency to acquire the requested information technology in accordance with the state enterprise architecture;

(B) Authorize acquisition of a modified information technology configuration;

(C) Notify the agency of the availability of department facilities to provide the requested information technology; or

(D) Recommend that the information technology be provided through the facilities of some other designated state agency.

(d) All state agencies shall comply with the provisions of the Arkansas Procurement Law, § 19-11-201 et seq., and applicable provisions of the General Accounting and Budgetary Procedures Law, § 19-4-101 et seq., in the acquisition, purchase, contracting for the purchase of, and leasing of information technology.

History. Acts 1977, No. 884, § 10; A.S.A. 1947, § 5-1410; Acts 1997, No. 914, § 11; 2001, No. 1722, § 8; 2007, No. 751, § 18; 2009, No. 648, § 7.

Amendments. The 2009 amendment substituted "Information Systems" for "Fi-

nance and Administration" throughout the section; inserted "in accordance with the state enterprise architecture" in (c)(4)(A); and made minor stylistic changes.

25-4-112. Application to educational institutions.

(a)(1) In the case of state-supported institutions of higher education and state-supported postsecondary vocational-technical schools, the provisions of this chapter shall apply to business and administrative applications of information technology but do not apply to academic and research applications.

(2) On-campus telecommunications systems shall also be exempt from the provisions of this chapter except when they are connected to the state telecommunications network infrastructure.

(3) On-campus telecommunications systems shall be defined as those bounded by the outer perimeter of contiguous campus property.

(b)(1) A state-supported institution of higher education, a post-secondary vocational-technical school, an area vocational school, or a public school district may request technical assistance regarding information technology from the Department of Information Systems.

(2)(A) Assistance shall be provided by the department free of charge within a reasonable period.

(B) However, the requesting institution shall reimburse the department for any actual expenses incurred while providing requested technical assistance.

History. Acts 1977, No. 884, § 16; A.S.A. 1947, § 5-1416; Acts 1997, No. 914, § 12; 2005, No. 1999, § 6.

25-4-114. Contracts and agreements for information technology.

(a) Contracts and agreements for state agencies for information technology shall adhere to the state enterprise architecture.

(b) A state agency shall submit to the Director of the Department of Information Systems for review and approval a request for the state agency to enter into a technology contract or agreement that is not in compliance with the state enterprise architecture.

(c) Contracts for the provision of information technology are inter-agency agreements and are exempt from the provisions of the Arkansas Procurement Law, § 19-11-201 et seq., and the General Accounting and Budgetary Procedures Law, § 19-4-101 et seq., nor are they required to be submitted to the Legislative Council for advice.

History. Acts 1977, No. 884, § 15; A.S.A. 1947, § 5-1415; Acts 1997, No. 914, § 14; 2001, No. 1722, § 10; 2007, No. 751, § 19; 2009, No. 648, § 8.

Amendments. The 2009 amendment rewrote (a); inserted (b); and redesignated the subsequent subsection accordingly.

25-4-119. Budget procedures.

(a)(1) Prior to the commencement of budget hearings conducted by the Legislative Council, the Director of the Department of Information Systems shall prepare an operating budget indicating the amount of money which will be required to operate the department each year of the succeeding biennium.

(2) The director shall also provide cost information to users of information technology centers, and those who require new or expanded information technology shall be provided cost estimates for inclusion in their budget requests.

(b)(1) When the General Assembly has completed the appropriation process, the director shall oversee budgetary planning for the department for each fiscal year of the biennium.

(2) The proposed annual operating budget shall be submitted to the Governor for his or her approval prior to the beginning of each fiscal year.

(3)(A) During the course of the biennium, the director shall make certain that the expenditures of the department do not exceed the income to be received by the department for the current fiscal year.

(B) Subject to the written approval of the Chief Fiscal Officer of the State upon the written application of the department and review by the Legislative Council, in order to effect compliance with state and federal statutory and regulatory provisions:

(i) The director shall adjust rates for services or issue billing adjustments as necessary; or

(ii) Funds sufficient to effect compliance shall be provided to the department.

(4)(A) If rates charged to a customer are increased to ensure compliance with state and federal statutory and regulatory provisions under subdivision (b)(3) of this section, then the director shall promptly notify the Governor, the Joint Committee on Advanced Communications and Information Technology, and all state agencies and other customers before any changes shall be effected.

(B) Rates shall be reviewed by the department on no less than an annual basis in order to ensure compliance with state and federal statutory and regulatory provisions.

(c) The quarterly allotment procedures applicable to state agencies, as defined by the General Accounting and Budgetary Procedures Law, § 19-4-101 et seq., shall be applicable to all appropriations funded directly through general revenue.

History. Acts 1979, No. 951, § 2; A.S.A. § 19; 2001, No. 1722, § 14; 2005, No. 1947, § 5-1413.1; Acts 1997, No. 914, 1999, § 7.

25-4-121. Department of Information Systems Revolving Fund.

(a) There is created and established on the books of the Treasurer of State, the Auditor of State, the Department of Finance and Administration, and the Department of Information Systems Revolving Fund.

(b) The fund shall consist of nonrevenue receipts derived from services provided to various agencies of the federal, state, city, and county governments, and any other moneys which may be provided by law for credit to the fund.

(c) All revenues received by the Department of Information Systems for providing information technology services shall be deposited in the State Treasury as nonrevenue receipts, there to be used for the maintenance, operation, and improvement of the department.

(d) All revenues received from agencies or other governmental entities for information technology services provided by contracts between

the Department of Information Systems and outside vendors may be deposited in the State Treasury as refund to expenditures.

(e) Subject to the written approval of the Chief Fiscal Officer of the State upon written application of the Department of Information Systems and review by the Legislative Council, the Director of the Department of Information Systems shall have the authority to transfer funds between the Information Technology Reserve Fund established by §§ 19-5-1056 and 25-4-123 and the Department of Information Systems Revolving Fund established under this section for cash management purposes.

History. Acts 1997, No. 914, § 21;
2001, No. 1722, § 15; 2005, No. 1999, § 8.

25-4-122. Reserve for equipment acquisition — Loans.

(a)(1) The Department of Information Systems is authorized to accumulate a reserve for equipment acquisition in an amount not to exceed the department's depreciation expense per fiscal year.

(2)(A) In addition, the department is authorized to obtain from the State Board of Finance loans from the Budget Stabilization Trust Fund to supplement the reserve if the reserve is insufficient to handle the total cost of required equipment acquisitions.

(B) These loans and the reserve for equipment acquisition shall be used exclusively for major equipment acquisitions or improvements of information technology required in order to fulfill the requirements for one (1) or more user agencies.

(C) The loans from the Budget Stabilization Trust Fund to the Information Technology Reserve Fund shall be repaid within five (5) years from revenues derived from charges to users, and the annual loan repayment amount shall be computed as a part of the total yearly expenses of the department and shall be charged proportionately to users.

(b)(1)(A) However, before the board approves any requests for loans by the department authorized in subdivision (a)(2) of this section, the requests shall be submitted to the Governor for his or her approval after the Governor has first obtained the advice of the Legislative Council in regard thereto.

(B) After having obtained advice, the Governor may in writing approve or reject the request.

(C) However, if the Legislative Council fails to give its written advice or opinion to the Governor within thirty (30) days after receiving notice of the request for loans, the Governor may proceed to act on the matter without the advice of the Legislative Council.

(2) The board shall make no loans if the approval of the Governor has not been obtained therefor.

(3) After obtaining the Governor's approval in writing, the board shall also review and may approve the loans and establish terms of repayment and a rate of interest to be paid by the Department of

Information Systems Revolving Fund to the Budget Stabilization Trust Fund. The rate shall be approximately equivalent to the rate of interest the board is receiving on other investments at the time of approving the loan request.

History. Acts 1997, No. 914, § 21;
2005, No. 1999, § 9.

25-4-124. Yearly computation of expenses — Disposition of surplus funds.

(a) Within sixty (60) days following the final closing entries for the consolidated annual financial report for each fiscal year, the Director of the Department of Information Systems shall obtain from the Chief Fiscal Officer of the State the written approval of a plan that shall include a proposed methodology to make all appropriate adjustments to effect compliance with state and federal statutory and regulatory provisions for the fiscal year.

(b)(1) If the plan under subsection (a) of this section requires appropriate credits or debits to customer accounts to effect compliance with state and federal statutory and regulatory provisions, the Department of Information Systems shall make any adjustments within sixty (60) days after approval of the plan.

(2) In the event that a customer no longer uses the services of the department, a fund transfer in the amount of that customer's credits under the plan described in subsection (a) of this section shall be made from the Department of Information Systems Revolving Fund to the customer's treasury fund, upon certification of the amount by the director to the Chief Fiscal Officer of the State and the Treasurer of State. In the event the customer does not have a treasury fund, a warrant shall be issued by the department in payment of the customer's credit.

(c) In the event that the customer has an unpaid account balance due the department, the customer's credit shall be withheld until the account balance is satisfied.

History. Acts 1997, No. 914, § 21;
2005, No. 1999, § 10.

25-4-125. State Broadband Manager.

(a) The Director of the Department of Information Systems is designated the State Broadband Manager.

(b) The State Broadband Manager shall coordinate the state's efforts to expand and improve broadband capacity and availability by:

(1) Serving as a single point of contact for:

(A) State agencies, boards, commissions, and constitutional officers, including without limitation the Governor, Department of Education, Department of Higher Education, and Arkansas State Highway and Transportation Department;

- (B) Private businesses, enterprises, and broadband providers;
- (C) Nonprofit organizations;
- (D) Governmental entities and organizations organized under federal law or the law of another state; and
- (E) Individuals and entities that seek to assist the state's efforts to improve economic development, elementary education, and secondary education through the use of broadband technology;
- (2) Gathering, compiling, and maintaining information obtained independently or from an individual or entity described in subdivision (b)(1) of this section;
- (3) Formulating, updating, and maintaining a state broadband plan; and
- (4) On or before January 1 and July 1 of each year, filing a written report of the activities and operations of the State Broadband Manager for the preceding six (6) months with the:
 - (A) Governor;
 - (B) Legislative Council; and
 - (C) Joint Committee on Advanced Communications and Information Technology.

History. Acts 2013, No. 1168, § 1.

CHAPTER 6

DEPARTMENT OF EDUCATION

SUBCHAPTER.

1. GENERAL PROVISIONS.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

25-6-101. Purpose.

25-6-102. Organization — Commissioner.

SECTION.

25-6-107. Local education agency numbers.

A.C.R.C. Notes. Acts 2003 (2nd Ex. Sess.), No. 90, § 3, provided: “(a)(1) Following the implementation of this act, the Department of Education shall realign.

“(2) The purpose of the realignment shall be for the department and the Division of Public School Accountability and the Division of Public School Academic Facilities to maximize their role as the active senior partners with the schools and to prepare to intervene immediately rather than after the school or school district fails.

“(3)(A) To realign, the department shall form a taskforce consisting of the Director

of the Division of Public School Accountability, the Director of the Division of Public School Academic Facilities, key department personnel, school district personnel, teachers, and other stakeholders to conduct a study of the department's and the divisions' delivery system and to make recommendations for the department's realignment.

“(B) As part of the study, the taskforce shall:

“(i) Review the functions, and responsibilities of the department, the Division of Public School Accountability, and the Division of Public School Academic Facilities to align the personnel according to these

functions and responsibilities to ensure each employee is qualified and capable of performing his or her duties according to the functions and responsibilities as defined by the taskforce; and

“(ii)(a) Conduct a comprehensive review of the salaries of individuals necessary to fulfill the department’s functions as defined by the taskforce, responsibilities, and constitutional mission of the state.

“(b) This study shall include a review of equity adjustments necessary to recognize differences in responsibility, performance, or seniority.

“(C) Qualifications and salary levels of the department’s staff shall be comparable to those of similar employees in school districts or in other state education agencies.

“(b) Following the work of the taskforce under this section, the department shall present proposed changes in staff grades and salaries to the Joint Budget Committee at the earliest opportunity for the purpose of preparing suggested legislation to be approved by the General Assembly.

“(c) The Director of the Department of Education may transfer any unclassified position to the Division of Public School Accountability or the Division of Public School Academic Facilities if the director of the division agrees that the position is an appropriate position to be in the division and approves the transfer.

“(d) The restructuring of the department shall be conducted in a manner that will provide sufficient personnel within the department to provide administrative and technological support to the Division of Public School Accountability and the Division of Public School Academic Facilities at a level that is sufficient for the divisions to carry out the duties set forth in this act.

“(e) In the restructuring of the department the director may require the department, the Division of Public School Academic Facilities, and the Division of Public School Accountability to coordinate and share certain administrative, custodial, legal, internal finance, and other

necessary personnel to effectuate the daily operations of those divisions and the department.”

Acts 2007, No. 318, § 2, provided:

“Disbursement of funds authorized by this act shall be subject to the following limitations:

“(1) No part of these funds shall be used to coerce, influence, or provide incentive to local school districts to select or deselect a Medicaid provider;

“(2) The Department of Education shall report annually to the House and Senate Public Health, Welfare and Labor Committees that the funds are not being used in a manner prohibited by this act and how they are being expended;

“(3) If any part of this section requires the state plan for the Arkansas Medicaid Administrative Claiming Program to be renegotiated with the federal Centers for Medicare and Medicaid Services or would cause in any way the loss of federal funds, this section shall be declared void and be severed from this Act.”

Effective Dates. Acts 2009, No. 1469, § 32: Apr. 10, 2009. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that it is the state’s constitutional obligation to provide a general, suitable, and efficient free system of public schools in the state; that the public school funding distribution changes in this act are needed to ensure that proper funding is provided to the affected public schools and school districts; and that this act is immediately necessary so that the affected public schools and school districts will receive the amount of funding for the current school year. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

25-6-101. Purpose.

It is intended that all authority and responsibility of the State Board of Education be administered through the Department of Education under the direction and supervision of the Commissioner of Education.

History. Acts 1981, No. 64, § 1; A.S.A. 1947, § 5-910.1; Acts 1987, No. 771, § 1; 1991, No. 773, § 6; 1991, No. 1244, § 5; 1995, No. 297, § 4; 1999, No. 1323, § 53; 2009, No. 1469, § 30.

Amendments. The 2009 amendment substituted “Commissioner” for “Director of the Department.”

25-6-102. Organization — Commissioner.

(a) The Department of Education shall consist of:

(1) The State Board of Education;

(2) The Department of Education under the direction and supervision of the Commissioner of Education; and

(3) Any divisions or subdivisions as presently exist within the Department of Education or as may be created by the State Board of Education or as created by law and placed under the Department of Education.

(b) The State Board of Education shall continue to perform its powers and duties as prescribed by law.

(c)(1) The commissioner shall be a member of the Governor’s cabinet.

(2) The commissioner shall perform all duties and exercise all powers relating to general education as may be granted by law.

History. Acts 1971, No. 38, § 10; 1981, No. 64, § 2; A.S.A. 1947, § 5-910; Acts 1987, No. 771, § 2; Acts 1991, No. 773, § 7; 1995, No. 297, § 5; 1999, No. 1323, § 54; 2009, No. 1469, § 31.

Amendments. The 2009 amendment substituted “Commissioner” for “Director” in the section heading; and substituted “Commissioner” for “Director of the Department” throughout the section.

25-6-107. Local education agency numbers.

(a)(1) The Department of Education is the sole and official issuer of local education agency numbers to educational entities in the state.

(2) These numbers shall be issued, activated, deactivated, or changed according to the annual schedule and in a format established by the department.

(b) Notwithstanding any other provision of law, an educational entity shall not be recognized as a public school district or entitled to the rights and privileges of a school district solely because the educational entity has been assigned a local education agency number.

(c) The State Board of Education shall adopt the necessary rules to fully implement this section.

History. Acts 2005, No. 2151, § 20.

CHAPTER 7

DEPARTMENT OF HIGHER EDUCATION

A.C.R.C. Notes. Acts 2013, No. 1397, § 46, provided: “ADMINISTRATIVE FEES. The Department of Higher Education is authorized to recover non-refundable administrative fees related to the institutional certification and exemption process for out-of-state, non-public, and

for profit colleges and universities. These fees include a notification fee, an application processing fee, and travel expenses for the certification review teams.”The provisions of this section shall be in effect only from July 1, 2013 through June 30, 2014.”

CHAPTER 8

DEPARTMENT OF FINANCE AND ADMINISTRATION

SECTION.
25-8-106. Marketing and redistribution
of state personal property.

SECTION.
25-8-110. Additional duties.

Effective Dates. Acts 2007, No. 751, § 38: July 1, 2007. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act dissolves and transfers the duties of the Executive Chief Information Officer, Chief Information Officer, and Office of Information Technology; and that

dissolving the offices at the beginning of the state’s fiscal year will result in a more efficient transfer of responsibilities and funds. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2007.”

25-8-102. Authority of director generally.

A.C.R.C. Notes. Acts 2013, No. 401, § 13, provided: “AUTHORITY TO EMPLOY CERTIFIED LAW ENFORCEMENT OFFICERS. The Director of the Department of Finance and Administration is authorized to employ not more than one (1) certified law enforcement officer as certified under § 12-9-101 et seq. The certified law enforcement officer employed

under this section shall be responsible for maintaining order and providing for the security, protection, and safety of Department buildings, grounds, property, employees and customers. The certified law enforcement officer shall have the powers, duties, privileges, and immunities of a certified law enforcement officer.”

25-8-106. Marketing and redistribution of state personal property.

- (a) The provisions of this section shall be applicable only with respect to personal property and shall not be interpreted to apply or to affect in any way the disposition of surplus real property of the state.

(b)(1) There is created within the Office of State Procurement of the Department of Finance and Administration a Marketing and Redistri-

bution Section for the purpose of promoting and ensuring effective utilization of surplus state property.

(2)(A) All state agencies, boards, commissions, departments, and colleges and universities are required and county, municipal, or other tax-supported institutions are authorized to utilize the services of the Marketing and Redistribution Section, unless specifically exempted in writing by the Director of the Office of State Procurement of the Department of Finance and Administration.

(B)(i) Nothing in this section shall be construed to make it mandatory that county, municipal, or other local government units utilize the services of the Marketing and Redistribution Section.

(ii) Nothing in this section shall be construed to make it mandatory that any agency, department, division, office, board, commission, or institution of this state, including state-supported institutions of higher education, utilize the services of the Marketing and Redistribution Section in the sale of surplus computer equipment and electronics to state agency employees for a price not less than ten percent (10%) above depreciated value.

(3) The Department of Finance and Administration shall maintain adequate and accurate records of the costs for operating the Marketing and Redistribution Section and is authorized to establish fair and reasonable charges for the services of the section. The charges for services shall be deposited in the State Treasury as nonrevenue receipts, there to be credited to the Property Sales Holding Fund for the operation, maintenance, and improvement of the Marketing and Redistribution Section.

(c) The Office of State Procurement may maintain an inventory of furniture, equipment, and other items which shall be made available to state agencies on rental agreements based upon fair and reasonable rental values.

(d) The department is authorized to establish a fair and reasonable fee schedule for redistributing property between state agencies upon their request.

(e) Proceeds from the sale, transfer, or rental of property by the Director of the Office of State Procurement of the Department of Finance and Administration shall be accounted for as follows:

(1) The purchasers, transferees, and lessees of property available for such purposes as are authorized by this section shall transmit to the Office of State Procurement the agreed sale price, service charge, or rental fee;

(2) The Office of State Procurement shall deposit the full amount of proceeds received, as set out above, in the State Treasury in the manner as provided by law;

(3)(A) Proceeds from the sale or transfer of property deposited in the State Treasury shall be classified as nonrevenue receipts and credited to the Property Sales Holding Fund herein created on the books of the Treasurer of State as a trust fund.

(B) Funds deposited in the Property Sales Holding Fund may be expended only by the selling or transferring agency under procedures

established by the Chief Fiscal Officer of the State and appropriations provided by the General Assembly.

(C) However, funds deposited in the Property Sales Holding Fund from the sale of property purchased from agency cash funds may be refunded to the agency cash fund from which the original expenditure was made by the issuance of a warrant under procedures established by the Chief Fiscal Officer of the State and the Auditor of State to be payable from appropriations provided by the General Assembly for disposition of the proceeds.

(f) The Director of the Department of Finance and Administration is authorized to promulgate reasonable rules and regulations, not inconsistent with law, for compliance with the provisions of this section, the Arkansas Procurement Law, § 19-11-201 et seq., the General Accounting and Budgetary Procedures Law, § 19-4-101 et seq., and the sale of surplus commodities to not-for-profit organizations under § 22-1-101.

History. Acts 1968 (1st Ex. Sess.), No. 44, §§ 1-7; 1972 (1st Ex. Sess.), No. 50, § 1; 1973, No. 806, §§ 4, 5; 1973, No. 876, § 30; 1977, No. 436, § 1; A.S.A. 1947, §§ 5-812 — 5-818; Acts 2001, No. 589, § 1; 2001, No. 1410, § 13; 2013, No. 1020, § 3.

Amendments. The 2013 amendment added “the sale of surplus commodities to not-for-profit organizations under § 22-1-101” to the end of (f).

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2001 Arkansas General Assembly, Public Agencies, 24 U. Ark. Little Rock L. Rev. 601.

25-8-110. Additional duties.

The Department of Finance and Administration shall:

- (1) Develop retention schedules for control, preservation, protection, and disposition of the electronic records of state agencies under § 25-18-601 et seq.;
- (2) Direct the development of policies and procedures that state agencies shall follow in developing information technology plans and technology-related budgets and technology project justification;
- (3) Review procurements to ensure conformity with information policies and standards and state-level plans and implementation strategies;
- (4) Advise state agencies on information technology contracts and agreements;
- (5) Develop and promulgate rules and guidelines governing the retention and management of public records commonly found in most state agencies under § 25-18-601 et seq.; and
- (6)(A) With assistance from the Department of Workforce Services, establish and maintain a web page to:
 - (i) Provide a menu of links to employer-related state web applications for required reporting, tax payments, and other data submissions;

(ii) Allow an employer to select a link based upon a desired type of function or application and be redirected to the appropriate agency web application; and

(iii) Provide information about tax submissions, employment reports, and child support submissions on the respective agency sites, including without limitation due dates, payment options, and agency contact information.

(B) The initial scope of the web page shall include links to:

(i) Online taxpayer services administered by the Department of Finance and Administration through the Arkansas Taxpayer Access Point web page;

(ii) Unemployment and new hire submissions administered by the Department of Workforce Services; and

(iii) Information concerning employer reporting and payment functions provided by the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration.

(C) The web page shall be designed with sufficient flexibility to allow additional links to other state agencies to be added as appropriate.

History. Acts 2007, No. 751, § 22; 2013, No. 1458, § 2.

A.C.R.C. Notes. Acts 2013, No. 1458, § 1, provided: "Purpose and intent. The purpose of this act is to:

"(1) Create a public web page to:

"(A) Provide a menu of links to employer-related state web applications for required reporting, tax payments, and other data submissions; and

"(B) Allow an employer to select a link based upon a desired type of function or

application and be redirected to the appropriate agency web application; and

"(2) Provide information about tax submissions, employment reports, and child support submissions on the respective agency sites, including without limitation due dates, payment options, and agency contact information."

Amendments. The 2013 amendment added (6).

CHAPTER 9

DEPARTMENT OF HEALTH

SECTION.

25-9-101. Creation — Director — Organization — Personnel.

25-9-102. [Repealed.]

25-9-106. Community Alcohol Safety Program.

SECTION.

25-9-107. Transfer of personnel pursuant to § 25-9-106.

Effective Dates. Acts 2007, No. 384, § 11: Mar. 19, 2007. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that many services delivered by the various divisions, offices, and units the Department of Health and Human

Services are essential to the public health, safety, and welfare; that the state fiscal year begins July 1; that beginning the process of decoupling the Division of Health of the Department of Health and Human Services from the Department of Health and Human Services during a fis-

cal year will cause disruptions of services and unnecessary time, effort, and expense in reallocating appropriations, budgets, personnel, equipment, and capital expenditures during a fiscal year; and that this act is immediately necessary because a delay beyond the beginning of the fiscal year will disrupt essential programs and services. Therefore, an emergency is declared to exist and this act being neces-

sary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

25-9-101. Creation — Director — Organization — Personnel.

(a)(1)(A) There is created the Department of Health, which is to be established if the Governor orders the separation of the Division of Health of the Department of Health and Human Services from the Department of Health and Human Services.

(B) Unless stated otherwise, all references in this chapter to "director" shall mean the Director of the Department of Health if established, and otherwise the Director of the Division of Health of the Department of Health and Human Services.

(2) [Repealed.]

(b)(1)(A) The director, with the advice and consent of the Governor, shall appoint the heads of the respective units of the Division of Health of the Department of Health and Human Services or the Department of Health.

(B) All other personnel of the Department of Health shall be employed by and shall serve at the pleasure of the director.

(2) However, nothing in this section shall be so construed as to reduce any right that an employee of the Division of Health of the Department of Health and Human Services or the Department of Health has under any civil service or merit system.

(c)(1) Each unit of the Department of Health shall be under the direction, control, and supervision of the director.

(2) The director may delegate his or her functions, powers, and duties to various units of the Department of Health as he or she shall deem desirable and necessary for the effective and efficient operation of the Department of Health.

(d)(1) The Division of Health of the Department of Health and Human Services or the Department of Health shall maintain an Office of Oral Health.

(2) The Director of the Office of Oral Health shall be an experienced public health dentist licensed to practice under the Arkansas Dental Practice Act, § 17-82-101 et seq.

(3) The Director of the Office of Oral Health shall:

(A) Plan, direct, and coordinate all dental public health programs with other local, state, and national health programs;

(B) Serve as the department's chief advisor on matters involving oral health; and

(C) Plan, implement, and evaluate all oral health programs within the department.

History. Acts 1971, No. 38, § 11; A.S.A. 1947, § 5-911; Acts 2001, No. 785, § 1; 2005, No. 1954, § 7; 2007, No. 384, § 7; 2013, No. 435, § 2.

A.C.R.C. Notes. Acts 2005, No. 1954, § 1, provided: "Legislative purpose.

"(a) The General Assembly declares that this act is necessary to:

"(1) Improve the health of the citizens of Arkansas in an effective and efficient manner; and

"(2) Provide for administrative cost savings in the delivery of health-related programs by combining overlapping functions and eliminating duplications of functions of the Department of Health and the Department of Human Services.

"(b) It is the intent of the General Assembly to provide for an orderly transfer of powers, authorities, duties, and functions of the Department of Health to the Department of Human Services with a minimum of disruption of governmental services and functions and with a minimum of expense."

Acts 2005, No. 1954, § 3, provided: "Transfer of the Department of Health into the Department of Health and Human Services.

"(a)(1)(A) Effective at 12:01 AM on July 1, 2005, the Department of Health is transferred to the Department of Health and Human Services.

"(B) Effective at 12:01 AM on July 1, 2005, the Department of Health shall be named and shall be known as the Division of Health of the Department of Health and Human Services.

"(2) All authority, powers, duties, and functions as established by law for the Department of Health, including all purchasing, budgeting, fiscal, accounting, human resources, payroll, legal, information systems, maintenance, program support, administrative support, and other management functions are transferred to the Department of Health and Human Services.

"(3)(A) All records, personnel, property, unexpended balances of appropriations, allocations, or other funds are transferred to the Department of Health and Human Services for use by the Division of Health of the Department of Health and Human Services.

"(B)(i) All powers, duties, and functions, including, but not limited to, rule-making, regulation, and licensing, promulgation of rules, rates, regulations and standards, and the rendering of findings, orders and adjudications as established by law for the Department of Health are transferred to the Director of the Department of Health and Human Services, except as specified in this act.

"(ii) All powers, duties, and functions, including, but not limited to, rulemaking, regulation, and licensing, promulgation of rules, rates, regulations, standards, all budgetary responsibilities, and the rendering of findings, orders and adjudications as established by law for the Breast Cancer Control Program or other transferred entities within the Department of Health shall be retained exactly as they were prior to the implementation of this act.

"(b) Nothing in this act shall be construed to increase the authority or powers of the Director of the Department of Health and Human Services or the Division of Health of the Department of Health and Human Services beyond those already conferred upon the Director of the Department of Health or the Department of Health, except as specifically defined in this act.

"(c) The Director of the Department of Health and Human Services shall appoint and employ the Director of the Division of Health of the Department of Health and Human Services.

"(d) The Arkansas Code Revision Commission shall replace "Department of Health" in the Arkansas Code with "Department of Health and Human Services."

Acts 2007, No. 384, § 1, provided:

"Creation of the Department of Health.

"(a) There is created the Department of Health, that is to be established if the Governor orders the separation of the Division of Health of the Department of Health and Human Services from the Department of Health and Human Services.

"(b) If the Governor establishes the Department of Health under subsection (a) of this section, the Arkansas Code Revision Commission shall replace all references in the Arkansas Code to the:

"(1) 'Division of Health of the Department of Health and Human Services' or 'Division of Health' with 'Department of Health'; and

"(2) 'Department of Health and Human Services' with 'Department of Human Services'.

"(c) Sections 2 through 12 of this act become effective only if the Governor establishes the Department of Health under subsection (a) of this section."

Acts 2007, No. 384, § 2, provided: "Transfer of the Division of Health of the Department of Health and Human Services out of the Department of Health and Human Services.

"(a) Effective sixty (60) days after the Governor establishes the Department of Health under this act, and as provided in the orders of the Governor, the following may be transferred to the Department of Health:

"(1) Authority, powers, duties, and functions as established by law for the Division of Health of the Department of Health and Human Services, including purchasing, budgeting, fiscal, accounting, human resources, payroll, legal, information systems, maintenance, program support, administrative support, and other management functions;

"(2) Records, personnel, property, unexpended balances of appropriations, allocations, or other funds of the Division of Health of the Department of Health and Human Services;

"(3) Rulemaking, regulation, and licensing, promulgation of rules, rates, regulations, and standards, and the rendering of findings, orders, and adjudications as established by law for the Division of Health of the Department of Health and Human Services, except as otherwise specified in this act.

"(b) Powers, duties, and functions, including without limitation, rulemaking, regulation, and licensing, promulgation of rules, rates, regulations, and standards, budgetary responsibilities, and the rendering of findings, orders, and adjudications as established by law for the Breast Cancer Control Program or other transferred entities within the Division of Health of the Department of Health and Human Services shall be retained as they existed on June 30, 2005.

"(c) The Governor may appoint a Surgeon General in accordance with § 20-7-103."

Acts 2007, No. 384, § 3, provided: "Transfer of the State Board of Health to the Department of Health.

"(a) Effective sixty (60) days after the Department of Health is established, the State Board of Health shall be transferred to the Department of Health.

"(b) The State Board of Health shall receive administrative support from the Department of Health and shall retain the same powers, authorities, duties, and functions prescribed by law as it had before the transfer and shall have all rule-making authority prescribed by law to the Division of Health of the Department of Health and Human Services before the transfer, except as provided for in this act, including, without limitation:

"(1) Rule making, licensing, and registration;

"(2) The promulgation of rules, rates, and standards;

"(3) Examining, investigating, inspecting, and reviewing; and

"(4) The rendering of findings, orders, and adjudications."

Amendments. The 2013 amendment repealed (a)(2).

25-9-102. [Repealed.]

Publisher's Notes. This section, concerning the Bureau of Alcohol and Drug Abuse Prevention, was repealed by Acts

2007, No. 827, § 194. The section was derived from Acts 1993, No. 890, §§ 1, 2.

25-9-103. Patient care providers — Wages — Required withholding — Fringe benefits.

A.C.R.C. Notes. Acts 2013, No. 1375, § 28, provided: "PATIENT CARE PROVIDERS — COMPENSATION, RE-

QUIRED WITHHOLDING, FRINGE BENEFITS AND REPORTING.

"(a) The Arkansas Department of

Health, at its discretion, is authorized to contract with intermittent Patient Care Providers in order to provide services in the home. The Department is authorized to pay compensation which may include state withholding, federal withholding, required matching, and other fringe benefits to contract Patient Care Providers. However, compensation shall not include state retirement or health benefits.

“(b) The Department of Health shall provide the following mileage reimbursement rates to intermittent and/or Patient Care Providers:

“(1) Beginning July 1, 2013, the Department of Health shall provide mileage reimbursement to all intermittent and/or contract Patient Care Providers at a rate of at least thirty-six (36) cents per mile or more as funding allows.

“(2) Beginning July 1, 2014, the Department of Health shall provide mileage reimbursement to all intermittent and/or contract Patient Care Providers at a rate of at least thirty-nine (39) cents per mile or more as funding allows.

“(3) Beginning July 1, 2015, the Department of Health shall provide mileage reimbursement to all intermittent and/or contract Patient Care Providers at the same rate as provided to all Department of Health employees.

“(c) Prior to January 15, 2014 the Department of Health shall provide to the Joint Budget Committee or the Arkansas

Legislative Council a report of the following information for the 2013 Fiscal Year and 2014 Fiscal Year to date:

“(1) Revenues, expenditures, and year end fund balances of the Home Health Program, as related to the Department of Health’s ability to fund an increased mileage reimbursement rate for the 2015 Fiscal Year.

“(2) A report of all third party reimbursements received for the Home Health Program listed by program type including Medicaid, Medicare, Private Insurance, and Affordable Care Act — Insurance Exchange participants.

“(3) The potential impact of changes in the Arkansas Medicaid Program, Medicare or Affordable Care Act reimbursement rates and the effect those program changes may have on a potential mileage reimbursement increase for the 2015 Fiscal Year.

“(4) A report of the amounts billed versus the total reimbursements for services rendered.

“(5) Total miles claimed by Patient Care Providers and the total amounts reimbursed for mileage.

“(d) All compensation to intermittent Patient Care Providers shall be made from the appropriation for Professional Fees and Services.

“The provisions of this section shall be in effect only from July 1, 2013 through June 30, 2014.”

25-9-105. Home health on-call and visit pay.

A.C.R.C. Notes. Acts 2013, No. 1375, § 16, provided: “HOME HEALTH ON-CALL AND VISIT PAY The Arkansas Department of Health is hereby authorized to compensate the following personnel responsible for providing in-home health care as necessary to maintain continuity of care outside routine working hours on weekdays and on weekends or holidays:

- “Area Nursing Director
- “Nursing Program Coordinator
- “Registered Nurse
- “Speech Pathologist
- “Physical Therapist
- “Licensed Social Worker
- “Occupational Therapist
- “Nurse Manager
- “Licensed Practical Nurse
- “Nursing Aide
- “Licensed Certified Social Worker

“Visit pay shall not exceed \$75 per visit. Employees requested to be on-call and/or on standby for visiting on nights, weekends, and/or holidays will be eligible to receive on-call pay not to exceed \$60 per day. Provided however, no compensation shall be paid to any employee required to be on-call and/or standby who fails to respond after the second notification that their services are needed. In the event of equipment or paging device malfunction, such penalty shall not apply. All compensated services shall be provided as directed by the Arkansas Department of Health. All visit and on-call pay shall be paid from funds as appropriated in this Act. Such compensation for visit and on-call pay, when added to the employee’s regular salary and benefits, shall not be construed as exceeding the maximum an-

nual salary as described in the General Accounting and Budgetary Procedures Act. “The provisions of this section shall be in effect only from July 1, 2013 through June 30, 2014.”

25-9-106. Community Alcohol Safety Program.

(a) On or after July 1, 1999, all powers, duties, functions, records, and funds administered or provided by other support divisions within the Arkansas State Highway and Transportation Department for the Traffic Safety Section of the Planning and Research Division regarding or relating to the state alcohol program, commonly known as the Community Alcohol Safety Program, administered by the department pursuant to the laws of this state and transferred to that department by Acts 1989, 1st Ex. Sess., No. 153, shall be transferred by a type 2 transfer, as defined in § 25-2-105, to the Division of Behavioral Health Services of the Department of Human Services.

(b) For the purposes of this section the term “funds” shall mean all funds derived from the State Administration of Justice Fund pursuant to § 16-10-310 for usage by the state alcohol program, education fees paid by offenders of the Omnibus DWI Act, § 5-65-101 et seq., and the appropriation for community alcohol safety.

History. Acts 1999, No. 1219, § 1; 1999, No. 1426, § 50; 2013, No. 1107, § 44.

Amendments. The 2013 amendment, in (a), substituted “Planning and Re- search” for “Programs and Contracts” and “Division of Behavioral Health Services of the Department of Human Services” for “Bureau of Alcohol and Drug Abuse Prevention of the Department of Health.”

25-9-107. Transfer of personnel pursuant to § 25-9-106.

All personnel transferred from the Arkansas State Highway and Transportation Department pursuant to § 25-9-106 shall be eligible for employment under this section in a comparable position with the Division of Behavioral Health Services of the Department of Human Services.

History. Acts 1999, No. 1219, § 5; 2013, No. 1107, § 45.

Amendments. The 2013 amendment substituted “Division of Behavioral Health Services of the Department of Human Services” for “Bureau of Alcohol and Drug Abuse Prevention of the Department of Health.”

CHAPTER 10
DEPARTMENT OF HUMAN SERVICES

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. DIVISION OF STATE SERVICES FOR THE BLIND.
4. DEPARTMENT OF HUMAN SERVICES STATE INSTITUTIONAL SYSTEM.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

25-10-101. Creation — Appointment of director.

25-10-102. Organization generally.

25-10-120. Research and Training Institute.

25-10-122. Office of Minority Mental Health — Creation.

25-10-123. Programs and policies — Development.

25-10-124. Administration of state or federal funds.

SECTION.

25-10-128. Division of Community Service and Nonprofit Support.

25-10-133. Mental health services — Transfer provision.

25-10-140. [Repealed.]

25-10-141. Subpoenas in administrative adjudications.

25-10-142. Home visitation program.

25-10-143. Advisory opinions.

A.C.R.C. Notes. Acts 2013, No. 1375, § 22, provided: “NURSING/DIRECT CARE EDUCATION STIPEND PROGRAM. Special provision for a Nursing/Direct Care Education Stipend Program for the Arkansas Department of Health (ADH) is hereby authorized to pay from funds appropriated in this Act. This program is for eligible nursing students who are attending accredited nursing institutions to become Registered or Licensed Practical Nurses.

“The stipend is five thousand dollars (\$5,000) per person per year. Any student who is awarded and accepts a stipend is under an employment commitment to the ADH and is required to work in a full-time employee status effective immediately upon graduation. The student employment commitment is equal to the number of years the stipend was awarded and accepted. In the event of Employee/Student default of the employment commitment, the Employee/Student will be considered in breach of contract and repayment of the stipend will be required as specified in the Stipend Contract.

“The ADH shall determine, on an annual basis, the number of student stipends available due to the availability of funds and the need for direct care services.

“The provisions of this section shall be in effect only from July 1, 2013 through June 30, 2014.”

Acts 2013, No. 1377, § 17, provided: “TRANSFER AUTHORITY. The Director of the Department of Human Services shall have transfer authority provided by the following:

“(a) DEPARTMENT OF HUMAN SERVICES RENOVATION FUND. The Director of the Department of Human Services is authorized to request fund transfers according to the provisions established by Arkansas Code Ann. 19-5-1020, Department of Human Services Renovation Fund, as amended herein; and

“(b) MATCH TRANSFER. The Director of the Department of Human Services, with the approval of the Chief Fiscal Officer of the State, is authorized to effect inter-agency and inter-divisional fund transfers for the purpose of providing the State's matching share for payments made to that Division or Office or its service providers for services eligible for federal reimbursement under programs administered by the Department of Human Services. The Department of Human Services shall report to the Legislative Council or Joint Budget Committee on a quarterly basis all fund transfers made in accordance with the authority granted by this section; and

“(c) YOUTH SERVICES — HOUSING AND SEPARATION APPROPRIATION PROVISIONS. The Division of Youth Services (DYS) is authorized to fulfill its responsibility to house offenders between the ages of 18 and 21 and to separate juvenile offenders by age and seriousness of offense by either employing additional state employees and providing the corresponding operating expenses or entering into professional services contracts. If the Division of Youth Services determines that the Division needs to employ state employees to fulfill the housing and separation requirements, they may transfer

up to the total amount appropriated for the DYS — Residential Services Program appropriation to the appropriate DYS appropriation and line items, upon approval of the Chief Fiscal Officer of the State, and prior review by the Legislative Council; and

“(d) REALLOCATION OF RESOURCES: (1) The Department of Human Services (DHS) provides hundreds of different services to over 1 million Arkansans. The specific mix of service needs and the funding and staffing required to provide them can vary significantly based on many factors, including natural disasters, changing federal mandates and funding sources, demographic shifts, fluctuating court-ordered services, social trends, and job market variations such as nursing shortages. The impact of these factors through the course of any fiscal year make it very difficult for the Department to accurately predict the exact needs for funding, appropriation and positions in each of its over 100 different appropriations. To ensure that it can respond quickly to changing client needs and make the most effective use of the resources allocated to it, the Department of Human Services shall be authorized to utilize the reallocation of resource authority to make the proper adjustments to the budgets within the Department. Therefore, upon determination by the Director of the Department of Human Services that a reallocation of resources within the department is necessary for the efficient and effective operation of the department, the director, with approval of the Governor, shall have the authority to request, from the Chief Fiscal Officer of the State, a transfer of positions, appropriations, line item appropriations, and funds within or between existing and newly created divisions, offices, sections, or units of the department. Provided, however, that no transfer of funds or appropriation that provides direct support or matching support for the Arkansas Medicaid Program shall be made to any other fund account or appropriation that does not directly support the Arkansas Medicaid Program. Further, no positions, funds, or appropriation authorized during the budget process for the Division of Children and Family Services compliance with initiatives established under the Angela R. consent decree shall be transferred to any other

division. Nothing in this provision is intended to prevent the one-time transfers of savings in any other program to the Arkansas Medicaid Program, with the exception of the provisions previously cited for the Division of Children and Family Services — Angela R. consent decree. The Division of Developmental Disabilities — Grants to Community Providers line item of the Developmental Disabilities Services — Grants-in-Aid appropriation may not be decreased. The appropriation, funding, and positions provided for the five Human Development Centers shall remain at a level sufficient to ensure quality care for the Centers’ residents. The exemptions provided in this subsection whereby certain DHS Programs and Divisions are protected from appropriation, fund, or position transfers are applicable only to the reallocation or transfer authority granted herein, and not by any reductions which are applicable to all state programs.

“The Director of the Department of Human Services shall submit any requests for transfers to and must receive approval of the requests for transfers from the Chief Fiscal Officer of the State, the Governor, and the Arkansas Legislative Council prior to the effective date of the transfers. Provided, however, that the Department of Human Services shall be limited to submitting no more than two reallocation of resources transfer requests during any fiscal year. In each Departmental request no single division will request reallocation for more than one purpose as listed in this section. Transfer authority for unforeseen purposes shall further be limited to no more than 5% of the total appropriation, funding, and positions authorized for the Department. Reallocation of resources transfers may include multiple items but shall be limited to the following purposes:

“i). Medicaid Program

“ii). Facilities and institutions costs, including operational expenses and construction/renovation/equipping expenses

“iii). Departmental grants and contracts

“iv). Court ordered settlements and payments

“v). Payment of administrative expenses, including but not limited to, overtime and other costs of personnel for critical services or functions necessary to carry out the mission of the agency

“vi). Restructuring efforts as deemed necessary to comply with new and/or unanticipated federal or state mandates

“vii). Redirecting internal resources, both direct and/or indirect, to meet client needs and services

“Determining the maximum number of employees and the maximum amount of appropriation and general revenue funding for a state agency each fiscal year is the prerogative of the General Assembly. This is usually accomplished by delineating such maximums in the appropriation act(s) for a state agency and the general revenue allocations authorized for each fund and fund account by amendment to the Revenue Stabilization law. Further, the General Assembly has determined that the Department of Human Services may operate more efficiently if some flexibility is provided to the Department of Human Services authorizing broad powers under the Reallocation of Resources provisions herein. Therefore, it is both necessary and appropriate that the General Assembly maintain oversight by requiring prior approval of the Legislative Council or Joint Budget Committee as provided by this section. The requirement of approval by the Legislative Council or Joint Budget Committee is not a severable part of this section. If the requirement of approval by the Legislative Council or Joint Budget Committee is ruled unconstitutional by a court of competent jurisdiction, this entire section is void.

“(2) If it is determined that the requested reallocation of resources transfers should be made, the Chief Fiscal Officer of the State shall then initiate the necessary transfer documents to reflect the transfers upon the fiscal records of the Treasurer of State, the Auditor of State, the Chief Fiscal Officer of the State, and the Department of Human Services. In addition, the Chief Fiscal Officer of the State, together with the Co-Chairpersons of the Legislative Council or Joint Budget Committee, may approve, on an emergency basis, requests for utilization of this Section without prior approval of the Arkansas Legislative Council, with any such actions reported at the next meeting of the Arkansas Legislative Council.

“The provisions of this section shall be in effect only from July 1, 2013 through June 30, 2014.”

Acts 2013, No. 1377, § 18, provided: “NURSING/DIRECT CARE EDUCATION STIPEND PROGRAM. Special provision for a Nursing/Direct Care Education Stipend Program for the Department of Human Services is hereby authorized to pay from State and Federal Funds appropriated in each division Act. This program is for eligible nursing students who are attending accredited nursing institutions to become Registered or Licensed Practical Nurses, as well as Certified Nursing Assistants, Residential Care Assistants, Residential Care Technicians, Residential Care Supervisors and Behavioral Health Aides.

“The stipend is \$5,000 per person per year. Any student who is awarded and accepts a stipend is under employment commitment to the respective DHS Division and is required to work for that division, in a full-time employee status effective immediately upon graduation. The student employment commitment is equal to the number of years the stipend was awarded and accepted. In the event of Employee/Student default of the employment commitment, the Employee/Student will be considered in breach of contract and repayment of the stipend will be required as specified in the Stipend Contract.

“Each division participating in the Education Stipend Program shall determine on an annual basis, the number of student stipends available.

“The provisions of this section shall be in effect only from July 1, 2013 through June 30, 2014.”

Acts 2013, No. 1377, § 19, provided: “NURSING/DIRECT CARE RECRUITMENT/RETENTION BONUSES. Special provision to provide Nursing/Direct Care Recruitment and Retention Bonuses for the Department of Human Services is hereby authorized to pay from State and Federal funds appropriated for each respective division. Nursing/direct care service recruitment/retention bonuses are in addition to the maximum annual amounts provided in the Regular Salaries Section of the respective Division Act for Registered Nurse, Licensed Practical Nurse, Certified Nursing Assistant, Residential Care Assistant, Residential Care Technician, Residential Care Supervisor and Behavioral Health Aide. New hire nurses must be licensed by the Arkansas State

Board of Nursing. The total recruitment/retention bonus payment commitment for eligible nurses shall not exceed \$4,000 per Registered Nurse and \$2,000 per Licensed Practical Nurse and \$1,000 per Certified Nursing Assistant, Residential Care Assistant, Residential Care Technician, Residential Care Supervisor and Behavioral Health Aide.

"The lump sum bonus payments and employment commitment to the State will be made in partial payments as follows:

"Registered Nurse Classifications

"\$1,000 after completing 6 months probationary employment

"\$1,500 after completing 1st year employment

"\$1,500 after completing 2nd year employment

"Licensed Practical Nurse Classifications

"\$ 500 after completing 6 months probationary employment

"\$ 500 after completing 1st year employment

"\$1,000 after completing 2nd year employment

"Certified Nursing Assistant/Residential Care Assistant/Residential Care

"Technician/Residential Care Supervisor/Behavioral Health Aide

"Classifications

"\$ 500 after completing 6 month probationary employment

"\$ 500 after completing 1st year employment

"Any qualified person hired and offered bonus payment described herein will forfeit the balance of the payments if he/she voluntarily resigns or is terminated for cause from employment from the Department of Human Services prior to completing the required employment commitment time periods outlined above.

"The provisions of this section shall be in effect only from July 1, 2013 through June 30, 2014."

Effective Dates. Acts 2003, No. 1717, § 3: July 1, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the provisions of this act are of critical importance to preserve the efficient operation of programs that deliver services for the prevention and treatment of alcohol and drug abuse in Arkansas. Therefore, an emergency is declared to exist and this act being necessary for the

preservation of the public peace, health, and safety shall become effective on July 1, 2003."

Acts 2007, No. 384, § 11: Mar. 19, 2007. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that many services delivered by the various divisions, offices, and units the Department of Health and Human Services are essential to the public health, safety, and welfare; that the state fiscal year begins July 1; that beginning the process of decoupling the Division of Health of the Department of Health and Human Services from the Department of Health and Human Services during a fiscal year will cause disruptions of services and unnecessary time, effort, and expense in reallocating appropriations, budgets, personnel, equipment, and capital expenditures during a fiscal year; and that this act is immediately necessary because a delay beyond the beginning of the fiscal year will disrupt essential programs and services. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2007, No. 862, § 5: Apr. 3, 2007, provided: "This act shall take effect upon the occurrence of the following: (1) The Director of the Division of Aging and Adult Services of the Department of Health and Human Services determines that adequate appropriation, funding, and positions are available to carry out a public guardianship program for adults; and (2) The director appoints an employee of the Division of Aging and Adult Services to serve as Public Guardian for Adults."

Acts 2009, No. 778, § 4: Apr. 3, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the transportation of children is an integral part of child care services and subjects the children to a risk of injury which can be minimized and insured against; and that this act is immediately necessary to

provide protection to children served by various child care centers. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2013, No. 528, § 6: Mar. 28, 2013. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the home visiting networks provide important services to Arkansas’s most vulnerable citizens, our infants and toddlers; that the agencies administering home visiting programs need to ensure the accountability of these programs; and that these changes need to be made immediately so that planning and coordination among the agencies comply in a timely manner with the reporting requirements. Therefore, an emergency is declared to exist, and this

act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2013, No. 1499, § 5: July 1, 2013. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the oversight and audit of the state’s Medicaid program is essential to its continued operation; that the creation of the Office of the Medicaid Inspector General will ensure that fraud, waste, and abuse are found in a timely manner; and that this act is necessary to ensure that state and federal monies are not misspent. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July, 1, 2013.”

25-10-101. Creation — Appointment of director.

(a) There is created a Department of Human Services.

(b)(1) The executive head of the department shall be the Director of the Department of Human Services.

(2) The director shall be appointed by the Governor with the consent of the Senate and shall serve at the pleasure of the Governor.

History. Acts 1971, No. 38, § 12; A.S.A. 1947, § 5-912; Acts 2005, No. 1954, § 8; Acts 2007, No. 384, § 8.

A.C.R.C. Notes. Acts 2005, No. 1954, § 1, provided: “Legislative purpose.

“(a) The General Assembly declares that this act is necessary to:

“(1) Improve the health of the citizens of Arkansas in an effective and efficient manner; and

“(2) Provide for administrative cost savings in the delivery of health-related programs by combining overlapping functions and eliminating duplications of functions of the Department of Health and the Department of Human Services.

“(b) It is the intent of the General Assembly to provide for an orderly transfer of powers, authorities, duties, and functions of the Department of Health to the Department of Human Services with a minimum of disruption of governmental services and functions and with a minimum of expense.”

Acts 2005, No. 1954, § 2, provided: “Renaming the Department of Human Services.

“(a) Effective at 12:01 AM on July 1, 2005, the Department of Human Services shall be renamed and shall be known as the Department of Health and Human Services.

“(b) The Arkansas Code Revision Commission shall replace all references to ‘Department of Human Services’ in the Arkansas Code with ‘Department of Health and Human Services.’”

Acts 2007, No. 384, § 1, provided: “Creation of the Department of Health.

“(a) “There is created the Department of Health, that is to be established if the Governor orders the separation of the Division of Health of the Department of Health and Human Services from the Department of Health and Human Services.

“(b) “If the Governor establishes the Department of Health under subsection (a) of this section, the Arkansas Code Revision Commission shall replace all references in the Arkansas Code to the:

“(1) “Division of Health of the Department of Health and Human Services” or “Division of Health” with “Department of Health”; and

“(2) “Department of Health and Human Services” with “Department of Human Services”.

“(c) “Sections 2 through 12 of this act become effective only if the Governor establishes the Department of Health under subsection (a) of this section.”

Acts 2007, No. 384, § 2, provided:

“Transfer of the Division of Health of the Department of Health and Human Services out of the Department of Health and Human Services.

“(a) Effective sixty (60) days after the Governor establishes the Department of Health under this act, and as provided in the orders of the Governor, the following may be transferred to the Department of Health:

“(1) Authority, powers, duties, and functions as established by law for the Division of Health of the Department of Health and Human Services, including purchasing, budgeting, fiscal, accounting, human resources, payroll, legal, information systems, maintenance, program support, administrative support, and other management functions;

“(2) Records, personnel, property, unexpended balances of appropriations, alloca-

tions, or other funds of the Division of Health of the Department of Health and Human Services;

“(3) Rulemaking, regulation, and licensing, promulgation of rules, rates, regulations, and standards, and the rendering of findings, orders, and adjudications as established by law for the Division of Health of the Department of Health and Human Services, except as otherwise specified in this act.

“(b) Powers, duties, and functions, including without limitation, rulemaking, regulation, and licensing, promulgation of rules, rates, regulations, and standards, budgetary responsibilities, and the rendering of findings, orders, and adjudications as established by law for the Breast Cancer Control Program or other transferred entities within the Division of Health of the Department of Health and Human Services shall be retained as they existed on June 30, 2005.

“(c) The Governor may appoint a Surgeon General in accordance with § 20-7-103.”

Acts 2007, No. 384, § 3, provided:

“Transfer of the State Board of Health to the Department of Health.

“(a) Effective sixty (60) days after the Department of Health is established, the State Board of Health shall be transferred to the Department of Health.

“(b) The State Board of Health shall receive administrative support from the Department of Health and shall retain the same powers, authorities, duties, and functions prescribed by law as it had before the transfer and shall have all rule-making authority prescribed by law to the Division of Health of the Department of Health and Human Services before the transfer, except as provided for in this act, including, without limitation:

“(1) Rule making, licensing, and registration;

“(2) The promulgation of rules, rates, and standards;

“(3) Examining, investigating, inspecting, and reviewing; and

“(4) The rendering of findings, orders, and adjudications.”

25-10-102. Organization generally.

(a) The Department of Human Services shall consist of and be operated under an integrated service system consisting of the following

divisions with responsibilities and programs assigned to them as determined by the Director of the Department of Human Services:

(1)(A) A Division of Aging and Adult Services.

(B) The Division of Aging and Adult Services may include the Office of Public Guardian for Adults;

(2) A Division of Medical Services;

(3) A Division of Behavioral Health Services, which shall include community mental health centers and state hospitals;

(4) A Division of Developmental Disabilities Services, which shall include both community programs and human development centers;

(5) A Division of County Operations;

(6) A Division of Administrative Services;

(7) A Division of Youth Services, which shall include serious offender and community-based programs and the youth service centers;

(8) A Division of Community Service and Nonprofit Support;

(9) A Division of State Services for the Blind;

(10) A Division of Children and Family Services; and

(11) A Division of Child Care and Early Childhood Education.

(b)(1)(A) Each division of the department shall be under the direction, control, and supervision of the director.

(B) From time to time, the director may transfer or assign existing duties or new programs or duties of the department to offices, sections, or units as he or she deems necessary for the efficient and necessary operation of the department.

(C) Before implementation of any reorganization, the director shall obtain the advice of the House Committee on State Agencies and Governmental Affairs and the Senate Committee on State Agencies and Governmental Affairs.

(2)(A) However, the state institutions and the operation of state institutional programs under the jurisdiction of the Board of Developmental Disabilities Services and the Department of Human Services State Institutional System Board shall be under the control of their respective boards, as provided by law.

(B) The boards shall perform their respective functions and duties under the general guidelines and standards promulgated by the director.

(3) The Division of State Services for the Blind and the Board of the Division of State Services for the Blind shall continue to function within the department with the powers prescribed in § 25-10-201 et seq.

History. Acts 1971, No. 38, § 12; 1985, No. 348, § 1; A.S.A. 1947, §§ 5-912, 5-912b; Acts 1989, No. 60, § 1; 1995, No. 164, § 1; 1997, No. 324, § 3; 2001, No. 1213, § 1; 2001, No. 1553, § 56; 2003, No. 1717, § 1; 2005, No. 1954, § 9; 2007, No. 384, § 9; 2007, No. 862, § 2; 2009, No. 549, § 1; 2011, No. 42, § 2; 2013, No. 980, § 18; 2013, No. 1107, § 46.

A.C.R.C. Notes. Acts 2005, No. 1954,

§ 1, provided: "Legislative purpose.

"(a) The General Assembly declares that this act is necessary to:

"(1) Improve the health of the citizens of Arkansas in an effective and efficient manner; and

"(2) Provide for administrative cost savings in the delivery of health-related programs by combining overlapping functions and eliminating duplications of func-

tions of the Department of Health and the Department of Human Services.

“(b) It is the intent of the General Assembly to provide for an orderly transfer of powers, authorities, duties, and functions of the Department of Health to the Department of Human Services with a minimum of disruption of governmental services and functions and with a minimum of expense.”

Acts 2007, No. 384, § 1, provides: “Creation of the Department of Health.

“(a) “There is created the Department of Health, that is to be established if the Governor orders the separation of the Division of Health of the Department of Health and Human Services from the Department of Health and Human Services.

“(b) “If the Governor establishes the Department of Health under subsection (a) of this section, the Arkansas Code Revision Commission shall replace all references in the Arkansas Code to the:

“(1) “Division of Health of the Department of Health and Human Services” or “Division of Health” with “Department of Health”; and

“(2) “Department of Health and Human Services” with “Department of Human Services”.

“(c) “Sections 2 through 12 of this act become effective only if the Governor establishes the Department of Health under subsection (a) of this section.”

Acts 2007, No. 384, § 2, provides: “Transfer of the Division of Health of the Department of Health and Human Services out of the Department of Health and Human Services.

“(a) “Effective sixty (60) days after the Governor establishes the Department of Health under this act, and as provided in the orders of the Governor, the following may be transferred to the Department of Health:

(1) “Authority, powers, duties, and functions as established by law for the Division of Health of the Department of Health and Human Services, including purchasing, budgeting, fiscal, accounting, human resources, payroll, legal, information systems, maintenance, program support, administrative support, and other management functions;

(2) “Records, personnel, property, unexpended balances of appropriations, allocations, or other funds of the Division of

Health of the Department of Health and Human Services;

(3) “Rulemaking, regulation, and licensing, promulgation of rules, rates, regulations, and standards, and the rendering of findings, orders, and adjudications as established by law for the Division of Health of the Department of Health and Human Services, except as otherwise specified in this act.

“(b) “Powers, duties, and functions, including without limitation, rulemaking, regulation, and licensing, promulgation of rules, rates, regulations, and standards, budgetary responsibilities, and the rendering of findings, orders, and adjudications as established by law for the Breast Cancer Control Program or other transferred entities within the Division of Health of the Department of Health and Human Services shall be retained as they existed on June 30, 2005.

“(c) “The Governor may appoint a Surgeon General in accordance with § 20-7-103.”

Acts 2007, No. 384, § 3, provides: “Transfer of the State Board of Health to the Department of Health.

“(a) “Effective sixty (60) days after the Department of Health is established, the State Board of Health shall be transferred to the Department of Health.

“(b) “The State Board of Health shall receive administrative support from the Department of Health and shall retain the same powers, authorities, duties, and functions prescribed by law as it had before the transfer and shall have all rule-making authority prescribed by law to the Division of Health of the Department of Health and Human Services before the transfer, except as provided for in this act, including, without limitation:

“(1) “Rule making, licensing, and registration;

“(2) “The promulgation of rules, rates, and standards;

“(3) “Examining, investigating, inspecting, and reviewing; and

“(4) “The rendering of findings, orders, and adjudications.”

Acts 2007, No. 862, § 1, provided:

“Legislative findings.

“The General Assembly finds that:

“(1) Many adults lack the capacity to provide informed consent to necessary health care, have not executed an advance health care directive or a durable power of

attorney, and have no friend or family member qualified and willing to consent on their behalf; and

“(2) It is therefore necessary for the preservation of the public health and safety to provide for a public guardian who can make informed consent to needed medical and long-term care on behalf of incapacitated adults who are unable to consent for themselves and for whom there is no other person qualified and willing to consent.”

Acts 2007, No. 862, § 5, provided:

“Contingent effectiveness.

“This act shall take effect upon the occurrence of the following:

“(1) The Director of the Division of Aging and Adult Services of the Department of Health and Human Services determines that adequate appropriation, funding, and positions are available to carry out a public guardianship program for adults; and

“(2) The director appoints an employee of the Division of Aging and Adult Services to serve as Public Guardian for Adults.”

Acts 2013, No. 980, § 25, provided: “The Arkansas Code Revision Commission shall make appropriate name changes in the Arkansas Code to implement the name change under Section 18 of this act.”

Acts 2013, No. 1107, § 48, provided: “The Arkansas Code Revision Commission shall make appropriate name changes in the Arkansas Code to implement the name change under Section 46 of this act.”

Amendments. The 2009 amendment deleted (a) and redesignated the subsequent subsections accordingly; inserted “Services” in (a)(3), and deleted (a)(12); and made related and minor stylistic changes.

The 2011 amendment substituted “Community Service and Nonprofit Support” for “Volunteerism” in (a)(8).

The 2013 amendments by Nos. 980 and 1107, in (a)(3), added “Services” after “Behavioral Health” and deleted “and the Office of Alcohol and Drug Abuse Prevention” after “state hospitals.”

Effective Dates. Acts 2007, No. 862, § 5: Apr. 3, 2007, provided: “This act shall take effect upon the occurrence of the following: (1) The Director of the Division of Aging and Adult Services of the Department of Health and Human Services determines that adequate appropriation, funding, and positions are available to carry out a public guardianship program for adults; and (2) The director appoints an employee of the Division of Aging and Adult Services to serve as Public Guardian for Adults.”

25-10-120. Research and Training Institute.

(a) The Research and Training Institute is authorized to seek, accept, and administer public or private funds, consisting of donations, federal and state grants, aids, contracts, reimbursements, cash donations, or state general revenue to accomplish its purposes. The institute is intended to:

(1) Promote recruitment and retention of highly qualified professionals at programs operated or certified by the Division of Behavioral Health Services of the Department of Human Services, community mental health center programs, and other public sector mental health programs in Arkansas;

(2) Improve clinical care by exploring new, innovative, and scientifically based treatment models for adults with serious mental illness and children and adolescents with serious emotional disturbance;

(3) Provide expanded clinical research and clinical-based research training opportunities for existing staff in institutional and community-based programs operated, certified, or supported by the division; and

(4) Promote the understanding of the various interdisciplinary treatments and the challenges facing institutional and community-based mental health professionals in Arkansas.

(b) To accomplish these purposes, the institute may enter into joint operating agreements with state universities or other institutions of higher education to:

(1) Accomplish the placement and training of students and faculty in psychiatry, psychology, social work, occupational therapy, nursing, and other relevant professions;

(2) Design, support, and implement clinical research projects to improve the quality and effectiveness of mental health services and operations;

(3) Enter into agreements with community mental health centers and other public mental health providers to accomplish the exchange of professional staff between state-operated programs and community mental health centers; and

(4) Establish a student loan program in accordance with procedures established by the Chief Fiscal Officer of the State, when the Director of the Division of Behavioral Health Services has determined a shortage of such professionals exists.

(c) Notwithstanding any other provisions of law to the contrary, the institute may enter into agreements with the division which may involve changes in staffing necessary to implement improved patient care programs contemplated by this section, and may enter into agreements with the University of Arkansas for Medical Sciences, Department of Psychiatry, to jointly operate or to support specific undertakings that are congruent with the institute's stated purposes.

History. Acts 1991, No. 1082, § 21; substituted "Behavioral" for "Mental" in 2013, No. 980, §§ 19, 20. (a)(1) and (b)(4).

Amendments. The 2013 amendment

25-10-122. Office of Minority Mental Health — Creation.

(a) There is created an Office of Minority Mental Health within the Division of Behavioral Health Services of the Department of Human Services.

(b) The head of the Office of Minority Mental Health shall be appointed by the Director of the Department of Human Services.

History. Acts 1991, No. 1210, § 1; substituted "Behavioral" for "Mental" in 2013, No. 980, § 21. (a).

Amendments. The 2013 amendment

25-10-123. Programs and policies — Development.

The Office of Minority Mental Health within the Division of Behavioral Health Services of the Department of Human Services shall develop programs and policies concerning the following:

(1) Providing culturally relevant mental health services to minority mentally ill people;

(2) Improving the availability and accessibility of mental health services to minority long-term mentally ill;

- (3) Educating minority mentally ill about their illness;
- (4) Providing minority families with education on mental illness; and
- (5) Providing accessible educational training within the mental health setting and the minority community.

History. Acts 1991, No. 1210, § 2; substituted “Behavioral” for “Mental” in 2013, No. 980, § 22.

Amendments. The 2013 amendment

25-10-124. Administration of state or federal funds.

(a) The Office of Minority Mental Health within the Division of Behavioral Health Services of the Department of Human Services is the authorized state agency to accept, receive, retain, and administer any state or federal funds relating to minority mental health.

(b) The Office of Minority Mental Health shall develop, comment on, and revise any designations of areas of minority mental health as underserved.

History. Acts 1991, No. 1210, § 3; substituted “Behavioral” for “Mental” in 2013, No. 980, § 23.

(a).

Amendments. The 2013 amendment

25-10-128. Division of Community Service and Nonprofit Support.

(a) There is created in the Department of Human Services a Division of Community Service and Nonprofit Support.

(b) Administrative assistance to coordinate the activities of the division shall be given by a Deputy Director for Community Service and Nonprofit Support who will devote full time to the duties of the office and assume the responsibility for carrying out the duties prescribed by this section. The deputy director shall employ any employees who are necessary to carry out the goals of the office, subject to appropriation by the General Assembly.

(c) The duties and responsibilities of the Division of Community Service and Nonprofit Support are to:

(1) Assess and recognize the needs of communities throughout Arkansas and to recruit, train, and coordinate volunteers and volunteer organizations in meeting those needs;

(2) Assist in specific projects involving volunteers to meet community needs;

(3) Provide greater public awareness and recognition of volunteer efforts; and

(4) Assist in devising training programs for use by community organizations that have programs to assist welfare recipients and to assist other divisions of the department in devising and administering programs to match those current and past welfare recipients with any community organizations that desire to assist them.

(d) The program and staff of the Division of Community Service and Nonprofit Support will be assisted by an advisory council. It will be the

responsibility of this council to assist the staff in setting goals, establishing priority activities, performing an advocacy role, and assisting in funding and resource development and publicity and recognition and awards programs. Council members shall be appointed by the Governor from existing state, local, and private agencies that operate volunteer programs and shall serve at the pleasure of the Governor.

History. Acts 1993, No. 403, § 19; 1997, No. 1259, § 1; 2011, No. 42, § 1.

Amendments. The 2011 amendment substituted "Community Service and

Nonprofit Support" for "Volunteerism" in the section heading and throughout the section and made minor stylistic changes.

25-10-133. Mental health services — Transfer provision.

(a)(1) Personnel positions and appropriations provided for all programs of the Division of Behavioral Health Services of the Department of Human Services may be reallocated when such actions are determined necessary to assure continued delivery of satisfactory levels of services in any of the several programs administered by the division.

(2) Such reallocations or transfers shall be requested by the Director of the Department of Human Services.

(b) Any saving made in state or federal appropriations for regular salaries, extra help, social security and retirement matching, or maintenance and general operations, and grants for approved projects, upon prior review by the Legislative Council and approval of the Department of Finance and Administration, may be transferred to the purchase of services for persons with long-term mental illness and in the establishment, operation, and maintenance of facilities, centers, or programs for this population.

History. Acts 1995, No. 1198, § 86; 2013, No. 980, § 24.

Amendments. The 2013 amendment

substituted "Behavioral" for "Mental" in (a)(1).

25-10-134. Community-based residential programs — Regulations.

A.C.R.C. Notes. Acts 2013, No. 1396, § 9, provided: "YOUTH SERVICES — COMMUNITY-BASED RESIDENTIAL PROGRAMS — RESTRICTIONS. The Department of Human Services shall not contract or pay for community-based residential programs within any municipality to house unrelated persons who have been adjudicated delinquent of an act that would constitute a Class A felony or higher or of a sexual offense or convicted of a Class A felony or higher or sexual offense until the following conditions have been met:

"1. Residents within one thousand (1,000) feet of the proposed location of the facility shall be notified by mail;

"2. A public hearing shall be conducted in the community of the proposed location of the facility by the contract provider at least ten (10) days in advance of the contract's effective date. Notice of the hearing shall be made by mail to each of the residents within 1,000 feet of the proposed location of the facility. The notification requirement shall not apply to already existing facilities at already existing locations.

“Provided further, upon establishment of such facilities within a particular municipality, the contract provider and the Department shall establish and implement a system to receive and respond to complaints and questions from residents of such municipality. In the event the Department and the provider fail to pro-

vide satisfactory communication as provided in this section to the residents, such facility may be declared a public nuisance by the municipality.

“The provisions of this section shall be in effect only from July 1, 2013 through June 30, 2014.”

25-10-135. Youth services.

A.C.R.C. Notes. Acts 2013, No. 1396, § 9, provided: “YOUTH SERVICES — COMMUNITY-BASED RESIDENTIAL PROGRAMS — RESTRICTIONS. The Department of Human Services shall not contract or pay for community-based residential programs within any municipality to house unrelated persons who have been adjudicated delinquent of an act that would constitute a Class A felony or higher or of a sexual offense or convicted of a Class A felony or higher or sexual offense until the following conditions have been met:

“1. Residents within one thousand (1,000) feet of the proposed location of the facility shall be notified by mail;

“2. A public hearing shall be conducted in the community of the proposed location of the facility by the contract provider at least ten (10) days in advance of the contract’s effective date. Notice of the hearing

shall be made by mail to each of the residents within 1,000 feet of the proposed location of the facility. The notification requirement shall not apply to already existing facilities at already existing locations.

“Provided further, upon establishment of such facilities within a particular municipality, the contract provider and the Department shall establish and implement a system to receive and respond to complaints and questions from residents of such municipality. In the event the Department and the provider fail to provide satisfactory communication as provided in this section to the residents, such facility may be declared a public nuisance by the municipality.

“The provisions of this section shall be in effect only from July 1, 2013 through June 30, 2014.”

25-10-140. [Repealed.]

Publisher’s Notes. This section, concerning transfer of the Bureau of Alcohol and Drug Abuse Prevention to the Division of Behavioral Health, was repealed

by Acts 2007, No. 827, § 194. The section was derived from Acts 2003, No. 1717, § 2.

25-10-141. Subpoenas in administrative adjudications.

(a)(1)(A) In every case of adjudication before the Department of Human Services, an administrative law judge shall have the power to issue subpoenas for the attendance of witnesses, the production of documents, or both, upon request of any party to the adjudication.

(B) Requests for a subpoena shall be granted by the administrative law judge if the testimony or documents desired are considered necessary and material without being unduly repetitious of other available evidence.

(2) Each subpoena shall:

(A) State that the subpoena is issued in a proceeding pending before the department;

(B) Contain the title of the administrative adjudication; and

(C) Command each person to whom it is directed to appear and give testimony at the time and place therein specified.

(3) Subpoenas may require the production of documents including:

- (A) Writings;
- (B) Drawings;
- (C) Graphs;
- (D) Charts;
- (E) Photographs;
- (F) Recordings; and

(G) Other data compilations from which information can be obtained.

(4) The party who requested a subpoena shall be responsible for serving the subpoena in the manner provided by law.

(5) Return of service shall be recorded, and the record shall be retained in the adjudication case file.

(6)(A) The circuit court of Pulaski County or the circuit court of the county of residence of any person duly served with a subpoena issued under this section may enforce the subpoena.

(B) Enforcement shall be in the manner provided by law for the enforcement of subpoenas issued by a circuit court.

(b) Upon motion and a showing of good cause, the presiding official may issue orders quashing or limiting subpoenas based on a determination that:

(1) The person subpoenaed does not have relevant, admissible evidence;

(2) The information or records sought are irrelevant to the adjudication;

(3) The information or records sought are confidential and not subject to disclosure or to production under federal laws or regulations or state law;

(4) Compliance with the subpoena would result in undue burden or expense; or

(5) The evidence possessed by the person subpoenaed or the information or record sought is unduly repetitious of other available evidence.

(c) If any child served with a subpoena to be a witness in an administrative hearing is a party to an open dependency-neglect or family-in-need-of-services case, the child's attorney ad litem shall be provided a copy of the subpoena.

History. Acts 2011, No. 1139, § 5.

25-10-142. Home visitation program.

In cooperation with the State Child Abuse and Neglect Prevention Board and the Department of Health, the Department of Human Services shall adopt rules to implement a home visitation program under § 20-78-901 et seq.

History. Acts 2013, No. 528, § 4.

25-10-143. Advisory opinions.

(a) As used in this section, “advisory opinion” means a written statement by the Director of the Department of Human Services or his or her designee that explains the applicability to a specified set of facts of a pertinent statutory or regulatory provision relating to the provision of medical items or services under the medical assistance program administered by the Department of Human Services.

(b)(1) The director may issue an advisory opinion at the request of a provider enrolled in the medical assistance program.

(2) Except as under subsection (h) of this section, the opinion is binding upon the director with respect to that provider only.

(3) If the director cannot respond to the request for an advisory opinion, the director shall within thirty (30) days notify the provider that he or she will not be responding to the request for an opinion.

(c) A provider may request an advisory opinion concerning:

(1) A substantive question or a procedural matter;

(2) Questions arising before an audit or investigation concerning a provider’s claim for payment or reimbursement; and

(3) A hypothetical or projected service plan.

(d) The director shall not issue an advisory opinion if the request for an advisory opinion relates to a pending question raised by the provider in an ongoing or initiated investigation conducted by the Medicaid Inspector General, the Attorney General, a criminal investigation, or a civil or criminal proceeding, or if the provider has received a written notice from the director or the Medicaid Inspector General that advises the provider of an imminent investigation, audit, suspended claim, or withholding of payment or reimbursement.

(e) This section does not supersede a federal regulation, law, requirement, or guidance.

(f) The director shall adopt a rule establishing the time within which an advisory opinion shall be issued and the criteria for determining the eligibility of a request for departmental response.

(g) An advisory opinion represents an expression of the views of the director as to the application of laws, rules, and other precedential material to the set of facts specified in the request for an advisory opinion.

(h)(1) A previously issued advisory opinion found by the director to be in error may be modified or revoked.

(2) If the director modifies or revokes an advisory opinion, the modification or revocation operates prospectively.

(3) A recovery of medical assistance overpayments caused by a provider’s reliance on an advisory opinion that is later modified or revoked is prohibited for the period up until the modification or revocation unless the provider is involved in fraud.

(4) The department promptly shall notify the provider of a modification or revocation of an advisory opinion.

(i) An advisory opinion shall include the following notice: "This advisory opinion is limited to the person or persons who requested the opinion and it pertains only to the facts and circumstances presented in the request."

(j) An advisory opinion shall cite the pertinent law and rule upon which the advisory opinion is based.

(k) An advisory opinion or a modification or revocation of a previously issued advisory opinion is a public record.

History. Acts 2013, No. 1499, § 4.

SUBCHAPTER 2 — DIVISION OF STATE SERVICES FOR THE BLIND

SECTION.

25-10-209. Information Reading Services
for the Blind created.

25-10-209. Information Reading Services for the Blind created.

(a) The Information Reading Services for the Blind is created within the Division of State Services for the Blind of the Department of Human Services.

(b) The Information Reading Services for the Blind shall be:

(1) An integral part of the rehabilitation state plan of the Division of State Services for the Blind;

(2) A network to:

(A) Provide audible access to statewide public notices, newspaper articles of interest, and other information, particularly at the local level, to persons who are visually handicapped; and

(B) Translate existing local, state, and national information into an audible format to make it available for access by visually handicapped persons; and

(3) Available to all state agencies as a means of making public notices audibly accessible to visually handicapped persons who cannot read print.

(c) This section does not limit the eligibility of the Information Reading Services for the Blind to receive line-item state or federal grant funding targeted solely for support of its programming.

(d) The Director of the Division of State Services for the Blind of the Department of Human Services shall consult at least annually with active consumers of the Information Reading Services for the Blind, including participating state agencies, in the design, improvement, and delivery of the services.

History. Acts 2007, No. 74, § 2.

A.C.R.C. Notes. Acts 2007, No. 74, § 1, provided:

"Public policy — Findings.

"(a) It is the public policy of the State of Arkansas to:

"(1) Provide visually handicapped per-

sons with services that are reasonably necessary to allow visually handicapped persons the opportunity to lead full, useful, and productive lives; and

"(2) Expend funds intended to improve the lives of visually handicapped persons in the most efficient and effective manner

possible.

“(b) The General Assembly finds that the purposes set forth in subsection (a) of this section may be advanced by the establishment in law of an Information Reading Services for the Blind within the Division of State Services for the Blind of

the Department of Health and Human Services to provide audible access to statewide public notices, newspaper articles of interest, and other information, particularly at the local level, to persons who are visually handicapped.”

SUBCHAPTER 4 — DEPARTMENT OF HUMAN SERVICES STATE INSTITUTIONAL SYSTEM

SECTION.

25-10-401. Creation.

25-10-402. Purpose — Guidelines.

25-10-404. Arkansas Juvenile Assess-

ment and Treatment Center.

Effective Dates. Acts 2007, No. 384, § 11: Mar. 19, 2007. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that many services delivered by the various divisions, offices, and units the Department of Health and Human Services are essential to the public health, safety, and welfare; that the state fiscal year begins July 1; that beginning the process of decoupling the Division of Health of the Department of Health and Human Services from the Department of Health and Human Services during a fiscal year will cause disruptions of services and unnecessary time, effort, and expense in reallocating appropriations, budgets,

personnel, equipment, and capital expenditures during a fiscal year; and that this act is immediately necessary because a delay beyond the beginning of the fiscal year will disrupt essential programs and services. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

25-10-401. Creation.

The state institutions known as the Arkansas State Hospital at Little Rock, the Arkansas Health Center at Benton, the Arkansas Services Center at Jonesboro, the youth services center located at North Little Rock, the Arkansas Juvenile Assessment and Treatment Center located in Saline County, and all other facilities owned and operated by the department for youth services or mental health treatment are consolidated to form the Department of Human Services State Institutional System.

History. Acts 1995, No. 1162, § 1; 1997, No. 1333, § 2; 2005, No. 1954, § 10; 2007, No. 384, § 10; 2007, No. 855, § 1;

2009, No. 549, § 2.

A.C.R.C. Notes. Acts 2005, No. 1954, § 1, provided: “Legislative purpose.

“(a) The General Assembly declares that this act is necessary to:

“(1) Improve the health of the citizens of Arkansas in an effective and efficient manner; and

“(2) Provide for administrative cost savings in the delivery of health-related programs by combining overlapping functions and eliminating duplications of functions of the Department of Health and the Department of Human Services.

“(b) It is the intent of the General Assembly to provide for an orderly transfer of powers, authorities, duties, and functions of the Department of Health to the Department of Human Services with a minimum of disruption of governmental services and functions and with a minimum of expense.”

Acts 2007, No. 384, § 1, provides: “Creation of the Department of Health.

“(a) There is created the Department of Health, that is to be established if the Governor orders the separation of the Division of Health of the Department of Health and Human Services from the Department of Health and Human Services.

“(b) If the Governor establishes the Department of Health under subsection (a) of this section, the Arkansas Code Revision Commission shall replace all references in the Arkansas Code to the:

“(1) Division of Health of the Department of Health and Human Services” or “Division of Health” with “Department of Health”; and

“(2) Department of Health and Human Services” with “Department of Human Services”.

“(c) Sections 2 through 12 of this act become effective only if the Governor establishes the Department of Health under subsection (a) of this section.”

Acts 2007, No. 384, § 2, provides: “Transfer of the Division of Health of the Department of Health and Human Services out of the Department of Health and Human Services.

“(a) Effective sixty (60) days after the Governor establishes the Department of Health under this act, and as provided in the orders of the Governor, the following may be transferred to the Department of Health:

“(1) Authority, powers, duties, and functions as established by law for the Division of Health of the Department of Health and Human Services, including

purchasing, budgeting, fiscal, accounting, human resources, payroll, legal, information systems, maintenance, program support, administrative support, and other management functions;

“(2) Records, personnel, property, unexpended balances of appropriations, allocations, or other funds of the Division of Health of the Department of Health and Human Services;

“(3) Rulemaking, regulation, and licensing, promulgation of rules, rates, regulations, and standards, and the rendering of findings, orders, and adjudications as established by law for the Division of Health of the Department of Health and Human Services, except as otherwise specified in this act.

“(b) Powers, duties, and functions, including without limitation, rulemaking, regulation, and licensing, promulgation of rules, rates, regulations, and standards, budgetary responsibilities, and the rendering of findings, orders, and adjudications as established by law for the Breast Cancer Control Program or other transferred entities within the Division of Health of the Department of Health and Human Services shall be retained as they existed on June 30, 2005.

“(c) The Governor may appoint a Surgeon General in accordance with § 20-7-103.”

Acts 2007, No. 384, § 3, provides: “Transfer of the State Board of Health to the Department of Health.

“(a) Effective sixty (60) days after the Department of Health is established, the State Board of Health shall be transferred to the Department of Health.

“(b) The State Board of Health shall receive administrative support from the Department of Health and shall retain the same powers, authorities, duties, and functions prescribed by law as it had before the transfer and shall have all rule-making authority prescribed by law to the Division of Health of the Department of Health and Human Services before the transfer, except as provided for in this act, including, without limitation:

“(1) Rule making, licensing, and registration;

“(2) The promulgation of rules, rates, and standards;

“(3) Examining, investigating, inspecting, and reviewing; and

“(4) The rendering of findings, orders, and adjudications.”

Acts 2013, No. 1308, § 22, provided: “ARKANSAS HEALTH CENTER.

“(A) The Department of Human Services shall not close the Arkansas Health Center that provides skilled nursing through specialized services and programs.

“(B) The Department of Human Services shall continue to accept clients for whom it has determined that skilled nursing and specialized services are needed at the Arkansas Health Center.

“(C) No funds shall be transferred or reduced from the Arkansas Health Center, except for use as federal matching funds, below the approved funding level on March 1, 2003 without the prior approval of the Arkansas Legislative Council or the Joint Budget Committee.

“(D) Determining the maximum amount of appropriation and general revenue funding for a state agency each fiscal year is the prerogative of the General Assembly. This is usually accomplished by delineating such maximums in the appropriation act(s) for a state agency and the

general revenue allocations authorized for each fund and fund account by amendment to the Revenue Stabilization law. Further, the General Assembly has determined that the Department of Human Services may operate more efficiently if some flexibility is provided to the Department of Human Services authorizing broad powers under this Section. Therefore, it is both necessary and appropriate that the General Assembly maintain oversight by requiring prior approval of the Legislative Council or Joint Budget Committee as provided by this section. The requirement of approval by the Legislative Council or Joint Budget Committee is not a severable part of this section. If the requirement of approval by the Legislative Council or Joint Budget Committee is ruled unconstitutional by a court of competent jurisdiction, this entire section is void.

“The provisions of this section shall be in effect only from July 1, 2013 through June 30, 2014.”

Amendments. The 2009 amendment rewrote the section to correct agency names.

25-10-402. Purpose — Guidelines.

(a) The Department of Human Services State Institutional System Board is established to manage the Department of Human Services State Institutional System, as provided and intended by Arkansas Constitution, Amendment 33.

(b) The board shall perform its functions and duties in accordance with the general guidelines, policies, and regulations of the department governing divisions, offices, sections, or units within the department with respect to budgets, personnel and personnel policies, records, purchasing, bookkeeping, and other administrative procedures prescribed by the Director of the Department of Human Services.

History. Acts 1995, No. 1162, § 2; 2005, No. 1954, § 11; 2007, No. 384, § 10; 2009, No. 549, § 3.

A.C.R.C. Notes. Acts 2005, No. 1954, § 1, provided: “Legislative purpose.

“(a) The General Assembly declares that this act is necessary to:

“(1) Improve the health of the citizens of Arkansas in an effective and efficient manner; and

“(2) Provide for administrative cost savings in the delivery of health-related programs by combining overlapping functions and eliminating duplications of func-

tions of the Department of Health and the Department of Human Services.

“(b) It is the intent of the General Assembly to provide for an orderly transfer of powers, authorities, duties, and functions of the Department of Health to the Department of Human Services with a minimum of disruption of governmental services and functions and with a minimum of expense.”

Acts 2007, No. 384, § 1, provided: “Creation of the Department of Health.

“(a) There is created the Department of Health, that is to be established if the

Governor orders the separation of the Division of Health of the Department of Health and Human Services from the Department of Health and Human Services.

“(b) If the Governor establishes the Department of Health under subsection (a) of this section, the Arkansas Code Revision Commission shall replace all references in the Arkansas Code to the:

“(1) Division of Health of the Department of Health and Human Services” or “Division of Health” with “Department of Health”; and

“(2) Department of Health and Human Services” with “Department of Human Services”.

“(c) Sections 2 through 12 of this act become effective only if the Governor establishes the Department of Health under subsection (a) of this section.”

Acts 2007, No. 384, § 2, provided: “Transfer of the Division of Health of the Department of Health and Human Services out of the Department of Health and Human Services.

“(a) Effective sixty (60) days after the Governor establishes the Department of Health under this act, and as provided in the orders of the Governor, the following may be transferred to the Department of Health:

“(1) Authority, powers, duties, and functions as established by law for the Division of Health of the Department of Health and Human Services, including purchasing, budgeting, fiscal, accounting, human resources, payroll, legal, information systems, maintenance, program support, administrative support, and other management functions;

“(2) Records, personnel, property, unexpended balances of appropriations, allocations, or other funds of the Division of Health of the Department of Health and Human Services;

“(3) Rulemaking, regulation, and licensing, promulgation of rules, rates, regulations, and standards, and the ren-

dering of findings, orders, and adjudications as established by law for the Division of Health of the Department of Health and Human Services, except as otherwise specified in this act.

“(b) Powers, duties, and functions, including without limitation, rulemaking, regulation, and licensing, promulgation of rules, rates, regulations, and standards, budgetary responsibilities, and the rendering of findings, orders, and adjudications as established by law for the Breast Cancer Control Program or other transferred entities within the Division of Health of the Department of Health and Human Services shall be retained as they existed on June 30, 2005.

“(c) The Governor may appoint a Surgeon General in accordance with § 20-7-103.”

Acts 2007, No. 384, § 3, provided: “Transfer of the State Board of Health to the Department of Health.

“(a) Effective sixty (60) days after the Department of Health is established, the State Board of Health shall be transferred to the Department of Health.

“(b) The State Board of Health shall receive administrative support from the Department of Health and shall retain the same powers, authorities, duties, and functions prescribed by law as it had before the transfer and shall have all rule-making authority prescribed by law to the Division of Health of the Department of Health and Human Services before the transfer, except as provided for in this act, including, without limitation:

“(1) Rule making, licensing, and registration;

“(2) The promulgation of rules, rates, and standards;

“(3) Examining, investigating, inspecting, and reviewing; and

“(4) The rendering of findings, orders, and adjudications.”

Amendments. The 2009 amendment rewrote (a).

25-10-404. Arkansas Juvenile Assessment and Treatment Center.

The youth services center located at Alexander shall be known as the “Arkansas Juvenile Assessment and Treatment Center”.

History. Acts 2007, No. 855, § 2.

CHAPTER 11

ARKANSAS ECONOMIC DEVELOPMENT COMMISSION

SECTION.

25-11-101. Creation — Director — Organization — Personnel.

25-11-102. Arkansas Economic Development Council.

SECTION.

25-11-103. Transfer of the Weatherization Assistance Program.

Effective Dates. Acts 2007, No. 1602, § 8: July 1, 2007. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act renames the Department of Economic Development and the Arkansas Economic Development Commission and that the ideal time to implement these names changes is at the beginning of the state's fiscal year. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2007."

Acts 2013, No. 1111, § 2: July 1, 2013. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the weatherization services provided to eligible re-

cipients of the Weatherization Assistance Program need to be continued; that eligible recipients should not be subject to a lengthy delay due to the transition of the Weatherization Assistance Program; that the financial benefits of the weatherization services provided reduce the amount of money spent on utilities and offer a greater level of comfort to recipients; and that this act is immediately necessary to ensure there is no delay in services provided to qualified individuals in need of weatherization services. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2013."

25-11-101. Creation — Director — Organization — Personnel.

(a) There is created the Arkansas Economic Development Commission.

(b) The executive head of the commission shall be the Director of the Arkansas Economic Development Commission. The director shall be appointed by the Governor, with the advice of the Arkansas Economic Development Council and the consent of the Senate, and shall serve at the pleasure of the Governor.

(c) The commission shall consist of the divisions that may be necessary to fulfill its purposes and that may be created by law and placed under the commission.

(d) The director, with the advice and consent of the Governor, shall appoint the heads of the respective divisions. All other personnel of the commission shall be employed by and shall serve at the pleasure of the director. However, nothing in this section shall be so construed as to reduce any right that an employee of the commission shall have under any civil service or merit system.

(e) Each division of the commission shall be under the direction, control, and supervision of the director. The director may delegate his or

her functions, powers, and duties to various divisions of the commission as he or she shall deem desirable and necessary for the effective and efficient operation of the commission.

History. Acts 1971, No. 38, § 6; 1979, No. 65, § 2; 1981, No. 41, § 2; A.S.A. 1947, § 5-906; Acts 1997, No. 540, § 49; 2007, No. 1602, § 4.

A.C.R.C. Notes. Acts 2007, No. 1602, § 1, provided: "SECTION 1. Department of Economic Development renamed Arkansas Economic Development Commission.

"(a)(1) The Department of Economic Development, as it is referred to or empowered through the Arkansas Code, is renamed.

"(2) In its place, the Arkansas Economic Development Commission is established, succeeding to the general powers and responsibilities previously assigned to the Department of Economic Development.

"(3) The Director of the Department of Economic Development shall identify and revise all interagency agreements, financial instruments, funds, and other necessary legal documents in order to effect this change."

"(b) Nothing in this act shall be construed as impairing the powers and authority of the Department of Economic Development before the effective date of the name change.

"(c) Appropriations authorized for the personal services and operating expenses of the Department of Economic Development may be utilized for the personal services and operating expenses of the Arkansas Economic Development Commission."

Acts 2007, No. 1602, § 2, provided: "SECTION 2. Arkansas Economic Development Commission renamed Arkansas Economic Development Council.

"(a)(1) The Arkansas Economic Development Commission, as it is referred to or

empowered through the Arkansas Code, is renamed.

"(2) In its place, the Arkansas Economic Development Council is established, succeeding to the general powers and responsibilities previously assigned to the Arkansas Economic Development Commission.

"(3) The Chair of the Arkansas Economic Development Commission shall identify and revise all interagency agreements, financial instruments, funds, and other necessary legal documents in order to effect this change.

"(b) Nothing in this act shall be construed as impairing the powers and authority of the Arkansas Economic Development Commission before the effective date of the name change.

"(c) Appropriations authorized for the personal services and operating expenses of the Arkansas Economic Development Commission may be utilized for the personal services and operating expenses of the Arkansas Economic Development Council."

Acts 2007, No. 1602, § 6, provided: "SECTION 6.

"(a) This act shall not be construed as impairing the continued effectiveness of any rules or orders promulgated or issued by the Department of Economic Development or the Arkansas Economic Development Commission before the effective date of this act.

"(b) This act shall not be construed as extinguishing or otherwise affecting the unexpired terms of any current members of the Arkansas Economic Development Commission."

Acts 2007, No. 1602, § 7, provided: "SECTION 7. The Arkansas Code Revision Commission shall make all changes in the Arkansas Code necessary to effectuate the intent of this act."

25-11-102. Arkansas Economic Development Council.

There is created an Arkansas Economic Development Council, whose membership, authorities, and powers shall be as specified in §§ 15-4-201 — 15-4-204, 15-4-209, 15-4-212, and 15-4-501 — 15-4-525.

History. Acts 1971, No. 38, § 6; 1979, 1947, § 5-906; Acts 1997, No. 540, § 50; No. 65, § 2; 1981, No. 41, § 2; A.S.A. 2007, No. 1602, § 5.

25-11-103. Transfer of the Weatherization Assistance Program.

(a)(1) The Weatherization Assistance Program, a federally funded program under § 42 U.S.C. 6861 et seq., operated by the Division of County Operations of the Department of Human Services is abolished and all the powers, duties and functions, records, property, personnel, unexpended balances of appropriations, allocations, or other funds are transferred by a Type 3 transfer to the Arkansas Energy Office of the Arkansas Economic Development Commission.

(2) This transfer does not conflict with any duties, responsibilities, or powers of the office.

(b) Unspent funds associated with the Weatherization Assistance Program shall be transferred from the department to the commission within thirty (30) days of the effective date of this act.

(c) The department annually shall transfer to the commission a minimum of fifteen percent (15%) up to a maximum of twenty-five percent (25%), as allowed by federal law or regulation, of the annual allocation for the Low Income Home Energy Assistance Program to the commission to be used by the program.

History. Acts 2013, No. 1111, § 1.

CHAPTER 13

DEPARTMENT OF PARKS AND TOURISM

A.C.R.C. Notes. Acts 2013, No. 1025, § 22, provided: “CASH PRIZES — STATE PARKS. The Department of Parks & Tourism is hereby authorized to award merchandise, gift certificates and cash prizes to contestants in various special events authorized by the Director of State Parks. Such prizes may be awarded to the 1st,

2nd and 3rd prize winners and shall be payable from the maintenance and operation line item of the Parks Cash Fund. The cash prizes, in aggregate, for all contests, shall not exceed \$10,000 per fiscal year.

“The provisions of this section shall be in effect only from July 1, 2013 through June 30, 2014.”

SUBCHAPTER 1 — GENERAL PROVISIONS

A.C.R.C. Notes. Acts 2013, No. 1025, § 28, provided: “EMPLOYEE CONTRACTS. The Department of Parks and Tourism is hereby authorized to enter into contracts with Department employees for the provision of golf lessons at the Department’s golf courses, outside of the employees’ normal working hours. Employees shall be Class A members and/or appren-

tices of the Professional Golfers’s; Association of America or the Ladies Professional Golf Association. The Director of Arkansas State Parks shall authorize all contracts in accordance with department standards and procedures for concession and operating contracts. Compensation to employees is not retirement eligible.”

CHAPTER 14

ARKANSAS DEPARTMENT OF ENVIRONMENTAL
QUALITY

SECTION.

25-14-102. [Repealed.]

A.C.R.C. Notes. Acts 2012, No. 274, § 43, provided: “ARKANSAS PUBLIC SCHOOL ACADEMIC FACILITIES PROGRAM. The Arkansas Department of Environmental Quality shall adopt policies before September 1, 2012 to ensure its cooperation regarding provision to the Division of Public School Academic Facilities and Transportation copies of the reports of inspections required under Arkansas Code § 6-21-813 (d) through (f) for the Arkansas Public School Academic Facilities Program Act.”

Acts 2013, No. 1202, § 44, provided: “ARKANSAS PUBLIC SCHOOL ACADEMIC FACILITIES PROGRAM. The Arkansas Department of Environmental Quality shall adopt policies before September 1, 2012 to ensure its cooperation regarding provision to the Division of Public School Academic Facilities and Transportation copies of the reports of inspections required under Arkansas Code § 6-21-813 (d) through (f) for the Arkansas Public School Academic Facilities Program Act.”

25-14-102. [Repealed.]

A.C.R.C. Notes. Acts 1997, No. 1219, § 2, provided: “Arkansas Department of Pollution Control & Ecology’ renamed to ‘Arkansas Department of Environmental Quality’.(a) Effective March 31, 1999, the ‘Arkansas Department of Pollution Control & Ecology’ or ‘Department,’ as it is referred to or empowered throughout the Arkansas Code Annotated, is hereby renamed. In its place, the ‘Arkansas Department of Environmental Quality’ is hereby established, succeeding to the general powers and responsibilities previously assigned to the Arkansas Department of Pollution Control & Ecology. The Director of the Arkansas Department of Pollution

Control & Ecology is directed to identify and revise all inter-agency agreements, financial instruments, funds, and other necessary legal documents in order to effect this change by March 31, 1999.

“(b) Nothing in this Act shall be construed as impairing the powers and authorities of the Arkansas Department of Pollution Control and Ecology prior to the effective date of the name change.”

Publisher’s Notes. This section, concerning hazardous duty compensation, was repealed by Acts 2011, No. 281, § 1. The section was derived from Acts 1995, No. 1191, § 33; 1999, No. 1164, § 184.

CHAPTER 15

ADMINISTRATIVE PROCEDURES

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. ADMINISTRATIVE PROCEDURE ACT.
3. ADMINISTRATIVE RULES THAT IMPACT SMALL BUSINESSES.

CASE NOTES

Applicability.

Request for disclosure of a legal opinion under 006-05-009 Ark. Code R. § GR-75(B) is a request for public records under the Arkansas Freedom of Information Act,

§ 25-19-101 et seq., not an agency action subject to the Arkansas Administrative Procedure Act, § 25-15-201 et seq. *Ryan & Co. v. Weiss*, 371 Ark. 43, 263 S.W.3d 489 (2007).

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

25-15-101. Interpreters generally.

25-15-102. Interpreters between a hearing individual and an individual who is deaf, deaf-blind, hard of hearing, or oral deaf.

SECTION.

25-15-104. Subpoena powers.

25-15-105. Administrative fees and penalties.

25-15-101. Interpreters generally.

(a) As used in this section, “interpreter” means an interpreter as defined in § 25-15-102.

(b) A person who cannot speak or understand the English language or who because of hearing, speaking, or other impairment has difficulty in communicating with other persons and who is a party to a civil proceeding or a witness in a civil proceeding is entitled to an interpreter to assist that person throughout the proceeding.

(c)(1) An interpreter may be retained by the party or witness himself or herself or, if the person is unable to pay for an interpreter, may be appointed by the administrative board or agency before which the proceeding is pending.

(2) If an interpreter is appointed by the board or agency, the fee for the services of the interpreter shall be set by the board or agency and be paid from funds available to the board or agency or be paid in any other manner ordered by the board or agency.

(d) An administrative agency may inquire into the qualifications and integrity of an interpreter and may disqualify any person for cause from serving as an interpreter.

(e) An interpreter for another person who is either a party or a witness in an administrative proceeding under this section shall take the following oath:

“Do you solemnly swear (or affirm) that you will justly, truly, and impartially interpret tothe oath about to be administered to him (her), and the questions which may be asked him (her), and the answers that he (she) shall give to such questions, relative to the cause now under consideration before this board (agency), so help you God (or under the pains and penalties of perjury)?”

History. Acts 1973, No. 555, § 1; A.S.A. 1947, § 5-715; Acts 2013, No. 1314, § 4.

Amendments. The 2013 amendment inserted (a) and redesignated former (a)

through (d) as (b) through (e); in present (b), substituted “to a civil proceeding” for “in any administrative proceeding” and “in a civil proceeding is” for “therein, shall

be"; and made stylistic changes to the section.

25-15-102. Interpreters between a hearing individual and an individual who is deaf, deafblind, hard of hearing, or oral deaf.

(a) For the purpose of appointing an interpreter between a hearing individual and an individual who is deaf, deafblind, hard of hearing, or oral deaf under § 25-15-101:

(1) "Administrative proceeding" means a proceeding of a department, board, commission, agency, committee, or licensing authority of the state or of a political subdivision or municipality;

(2) "Deaf individual" means an individual who has a documented hearing loss so severe that the individual is unable to process speech and language through hearing, with or without amplification;

(3) "Deafblind individual" means an individual who has a combined loss of vision and hearing that prevents the individual's vision or hearing from being used as a primary source for accessing information;

(4) "Hard of hearing individual" means an individual who has a hearing loss, may primarily use visual communication, and may use assistive devices;

(5) "Interpreter" means a licensed qualified interpreter or a licensed provisional interpreter licensed by the Department of Health under § 20-14-801 et seq.;

(6) "Oral deaf individual" means an individual whose sense of hearing is nonfunctional for the purpose of communication and whose primary communication is by speech reading and spoken English; and

(7) "Oral interpreter" means a licensed qualified interpreter or a licensed provisional interpreter who interprets language through facial and lip movements only and who does not use manual communication.

(b)(1) An interpreter shall not be appointed unless the appointing authority and the individual who is deaf, deafblind, hard of hearing, or oral deaf makes a preliminary determination that the interpreter is able to readily communicate with the individual who is deaf, deafblind, hard of hearing, or oral deaf and is able to accurately interpret the statements of the individual who is deaf, deafblind, hard of hearing, or oral deaf and interpret the proceedings in which an individual who is deaf, deafblind, hard of hearing, or oral deaf may be involved.

(2) An individual who is deaf, deafblind, hard of hearing, or oral deaf entitled to an interpreter under § 25-15-101 is entitled to an interpreter as defined by this subsection.

(c)(1) An oral interpreter shall be provided upon the request of an individual who is deaf, deafblind, hard of hearing, or oral deaf who does not communicate in sign language.

(2)(A) The right of an individual who is oral deaf to an interpreter may not be waived except by an individual who is oral deaf who does not use sign language and who initiates the request for a waiver in writing.

(B) The waiver is subject to approval of counsel to the individual who is oral deaf, if existent, and is subject to approval of the appointing authority.

(d) A department, board, commission, agency, committee, or licensing authority of the state or of a political subdivision or municipality shall appoint an interpreter to interpret an administrative proceeding to an individual who is deaf, deafblind, hard of hearing, or oral deaf and to interpret the testimony or statements of the individual who is deaf, deafblind, hard of hearing, or oral deaf.

(e)(1) An individual who is deaf, deafblind, hard of hearing, or oral deaf whose appearance before a proceeding entitles him or her to an interpreter shall notify the appointing authority of the need of the individual who is deaf, deafblind, hard of hearing, or oral deaf before an appearance and shall request at that time the services of an interpreter.

(2)(A) If an individual who is deaf, deafblind, hard of hearing, or oral deaf reasonably expects the need for an interpreter to be for a period greater than a single day, the individual who is deaf, deafblind, hard of hearing, or oral deaf shall notify the appointing authority.

(B) This notification shall be sufficient for the duration of the participation of the individual who is deaf, deafblind, hard of hearing, or oral deaf in the proceedings.

(f) An appointing authority may require a person requesting the appointment of an interpreter to furnish reasonable proof of the deafness of the individual who is deaf, deafblind, hard of hearing, or oral deaf when the appointing authority has reason to believe that the deaf person, deafblind person, hard of hearing person, or oral deaf person is not deaf, deafblind, hard of hearing, or oral deaf.

(g) The appointing authority shall channel requests for qualified interpreters through the Department of Health.

(h) Before an interpreter participates in any proceedings subsequent to an appointment under this section, the interpreter shall make an oath or affirmation that the interpreter will:

(1) Make a true interpretation in an understandable manner to the individual who is deaf, deafblind, hard of hearing, or oral deaf for whom the interpreter is appointed; and

(2) Interpret the statements of the individual who is deaf, deafblind, hard of hearing, or oral deaf desiring that statements be made in the language best suited to the needs of the individual who is deaf, deafblind, hard of hearing, or oral deaf.

(i) The appointing authority shall provide recess periods as necessary for the interpreter when the interpreter requests a recess period.

(j) Information that the interpreter gathers, learns from, or relays to the individual who is deaf, deafblind, hard of hearing, or oral deaf pertaining to an administrative, civil, or criminal proceeding shall at all times remain confidential and privileged, on an equal basis with the attorney-client privilege, unless the individual who is deaf, deafblind, hard of hearing, or oral deaf desires that the information be communicated to other persons.

(k)(1) An interpreter appointed under this section is entitled to a reasonable fee for his or her services.

(2) The fee shall be in accordance with standards established by the Department of Health and in addition to actual expenses for travel and transportation.

(3)(A) If the interpreter is appointed by a court, the fee shall be paid out of general county funds.

(B) If the interpreter is otherwise appointed, the fee shall be paid out of funds available to the appointing authority.

History. Acts 1979, No. 664, §§ 1, 2; and an individual who is deaf, deafblind, A.S.A. 1947, §§ 5-715.1, 5-715.2; Acts hard of hearing, or oral deaf" for "for the 1991, No. 469, § 3; 2013, No. 1314, § 4. deaf" in the section heading, and rewrote the section.

Amendments. The 2013 amendment substituted "between a hearing individual

25-15-104. Subpoena powers.

(a)(1) The following boards and commissions shall have the power to issue subpoenas and bring before the board or commission as a witness any person in this state:

(A) Auctioneer's Licensing Board, § 17-17-201 et seq.;

(B) State Athletic Commission, § 17-22-201 et seq.;

(C) Cosmetology Technical Advisory Committee, § 17-26-201 et seq.;

(D) Arkansas Board of Examiners in Counseling, § 17-27-201 et seq.;

(E) State Board of Embalmers and Funeral Directors, § 17-29-201 et seq.;

(F) Committee of Plumbing Examiners of the State Board of Health, § 17-38-202;

(G) Arkansas Social Work Licensing Board, § 17-103-201 et seq.;

(H) HVACR Licensing Board, § 17-33-201 et seq.;

(I) Liquefied Petroleum Gas Board, § 15-75-201 et seq.;

(J) Judicial Discipline and Disability Commission, Arkansas Constitution, Amendment 66, and § 16-10-401 et seq.;

(K) Veterinary Medical Examining Board, § 17-101-201 et seq.;

(L) Arkansas Board of Dispensing Opticians, § 17-89-201 et seq.;

(M) State Board of Election Commissioners, § 7-4-101 et seq.; and

(N) State Board of Health, § 20-7-101 et seq.

(2) These boards and commissions shall provide by regulation for the issuance of a subpoena upon the request of any party to a proceeding pending before the board or commission or at the request of the board or commission.

(3) The subpoena shall:

(A) Be in the name of the board or commission;

(B) State the name of the board or commission and the name of the proceeding; and

(C)(i) Command each person to whom it is directed to give testimony at the time and place specified in the subpoena in one (1) of the following ways:

(a) In person;

(b) Before a certified court reporter under oath at the place of the witness's residence or employment;

(c) By video-taped deposition at the place of the witness's residence or employment; or

(d) By live video communications from the witness' residence, place of employment, or a nearby facility capable of providing video transmission to the state agency that has subpoenaed the witness.

(ii) The manner of providing testimony under the subpoena shall be conducted by in person testimony unless another manner is agreed upon by the board or commission and the person who is the subject of the subpoena.

(4) The subpoena may require the witness to bring with him or her any book, writing, or other thing under his or her control that he or she is bound by law to produce in evidence.

(5) Service of the subpoena shall be in the manner as now provided by statute or rule for the service of subpoenas in civil cases.

(b)(1) A witness who has been served by subpoena in the manner provided by law and who appears in person to testify at the trial or cause pending before the board or commission shall be paid or tendered the legal fees for travel and attendance as provided by law.

(2) In the event a witness has been served with subpoenas under this section and fails to provide testimony in obedience to the subpoena, the board or commission may apply to the circuit court of the county wherein the board or commission is having its meeting for an order causing the arrest of the witness and directing that the witness be brought before the court.

(3) The court shall have the power to punish the disobedient witness for contempt as provided by the Arkansas Rules of Civil Procedure.

(4) A witness who is served with a subpoena under this section may challenge the validity of the subpoena in the circuit court of the county where the board or commission is having its meeting or the Circuit Court of Pulaski County.

(c) This section is intended to be supplemental and add the power to issue subpoenas to the various chapters of the Code that do not now provide the power to do so. This section shall not repeal any law or part of laws now in existence.

History. Acts 1993, No. 1286, § 1; 1995, No. 757, § 1; 1999, No. 1122, § 7; 2001, No. 617, § 22; 2009, No. 83, § 1; 2009, No. 1182, § 1; 2011, No. 1122, §§ 1, 2.

Amendments. The 2009 amendment by No. 83 added (a)(1)(O) and made related changes.

The 2009 amendment by No. 1182, in (a)(2), inserted "and commissions" and "or

commission” twice; rewrote (a)(3); substituted “subpoena” for “writ” in (a)(4), and (a)(5); rewrote (b)(1); in (b)(2), inserted “or commission” twice and substituted “provide testimony” for “attend the hearing;”; inserted (b)(4); and made related and minor stylistic changes.

The 2011 amendment substituted “Cosmetology Technical Advisory Committee” for “State Board of Cosmetology” in (a)(1)(C); deleted (a)(1)(F) and redesignated the remaining subdivisions accordingly; and substituted “has been served” for “shall have been served” in (b)(2).

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of
Legislation, 2001 Arkansas General As-
sembly, Professions, Occupations, and

Businesses, 24 U. Ark. Little Rock L. Rev.
535.

25-15-105. Administrative fees and penalties.

- (a) As used in this section, “agency” means the same as defined at § 25-15-202.
- (b)(1) An agency shall not assess a fee or penalty without specific statutory authority to:
- (A) Assess a certain type and amount of fee or penalty; or

(B) Impose a fee or penalty in general.
- (2) A fee or penalty established in the rules of an agency before the effective date of this section that does not comply with subdivision (b)(1) of this section may remain in effect until July 1, 2013, but shall not be increased above the amount established by the agency for that fee or penalty as of the effective date of this section.
- (c) Subsection (b) of this section does not affect an agency’s authority to deny, suspend, and revoke licenses within its regulatory authority.

History. Acts 2011, No. 1159, § 1.

SUBCHAPTER 2 — ADMINISTRATIVE PROCEDURE ACT

SECTION.	SECTION.
25-15-202. Definitions.	25-15-216. Review of agency rules.
25-15-204. Rules — Procedure for adop- tion.	25-15-218. Publication on the Internet — Uniform numbering sys- tem.
25-15-205. Rules — “The Arkansas Reg- ister”.	25-15-219. Publication on the Internet — Meeting dates.
25-15-208. Administrative adjudication — Procedures generally.	

Effective Dates. Acts 2006 (1st Ex. Sess.), No. 38, § 4: Apr. 11, 2006. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that current Arkansas law does not provide sufficient information on the cost of administrative rules promulgated by the State Board of Education and the State Board of Workforce

Education and Career Opportunities; and that this bill will provide critical information on the cost of administrative rules to public school districts and will minimize the possibility of the placement of unfunded mandates upon public school districts. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the pub-

lic peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2007, No. 143, § 3: February 23, 2007. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that small businesses represent a vital part of the economy of the State of Arkansas; that this act will protect small businesses from

inadvertent financial harm caused by administrative rules; and that this act should become effective as soon as possible to shield small businesses from potential harm. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

CASE NOTES

Applicability.

Recommendations by a state board as to the adoption of a mail order service and change in the reimbursement rates of a pharmacy service plan for state and public school employees did not constitute “rule-making” within § 25-15-202(8), (9) of the Arkansas Administrative Procedure Act, § 25-15-201 et seq., and accordingly, the notice and hearing provisions therein did not have to be complied with; such recom-

mendations were within the board’s legislatively mandated duties, pursuant to § 21-5-401. Ark. Pharmacist’s Ass’n v. Ark. State & Pub. Sch. Life, 352 Ark. 1, 98 S.W.3d 27 (2003).

Cited: Holloway v. State Bd. of Architects, 79 Ark. App. 200, 86 S.W.3d 391 (2002); Ark. Dep’t of Human Servs. v. Haen, 81 Ark. App. 171, 100 S.W.3d 740 (2003).

25-15-201. Title.

RESEARCH REFERENCES

Ark. L. Rev. Case Note, Lost in Translation: Combs v. City of Springdale, An Overview of the Ins and Outs of Appeals Procedure for Administrative Decisions by Local Governments, 61 Ark. L. Rev. 351.

U. Ark. Little Rock L. Rev. Arkansas’s Public Records Retention Program: Finding the FOIA’s Absent Partner, 28 U. Ark. Little Rock L. Rev. 175.

CASE NOTES

ANALYSIS

Appellate Review.
Counsel.
Judicial-Discipline Matters.
State Board of Education.

Appellate Review.

Writ of mandamus was properly denied where a church and its affiliated university sought an exception from the certifi-

cation requirements of the Arkansas Department of Higher Education; the church could have brought a declaratory action to determine whether or not the exception for programs that were predominantly religious in nature applied, and that was a determination to be made under the Department’s administrative procedures. Axley v. Hardin, 353 Ark. 529, 110 S.W.3d 766 (2003).

Dismissal of a psychologist’s 42

U.S.C.S. § 1983 claims under the Rooker-Feldman doctrine was affirmed where psychologist's federal court claims challenging application of certain regulations by the Arkansas Board of Examiners in Psychology were inseparable from psychologist's interest in upsetting a state court judgment effectively affirming the Board's application of the regulations; psychologist moved for voluntary dismissal of an appeal of the Board's decision to a state court under the Arkansas Administrative Procedure Act, §§ 25-15-201 to 25-15-217, and the state court's dismissal of the action with prejudice effectively affirmed the Board's decision. *Prince v. Ark. Bd. of Examiners in Psychology*, 380 F.3d 337 (8th Cir. 2004).

Counsel.

Bail bond agent did not receive disparate treatment because in the notice of hearing sent to him by the Arkansas Professional Bail Bondsman Licensing Board, the agent was advised that he had the right to be represented by counsel; the agent was given the same opportunity to be represented by counsel as were a bonding company and its owner. *Hester v. Ark. Prof'l Bail Bondsman Licensing Bd.*, 2011 Ark. App. 389, 383 S.W.3d 925 (2011).

Judicial-Discipline Matters.

Arkansas Administrative Procedure Act (§ 25-15-201 et seq.) is inapplicable to judicial-discipline matters. *Ark. Judicial Discipline & Disability Comm'n v. Proctor*, — Ark. —, 360 S.W.3d 61 (2010), cert. denied, — U.S. —, 130 S. Ct. 3516, 177 L. Ed. 2d 1093 (2010).

State Board of Education.

The Administrative Procedure Act (APA), § 25-15-201 et seq., is applicable to a decision by the Arkansas State Board of Education regarding a petition for closure, pursuant to § 6-20-602, because the Board is an administrative agency, whose decisions are subject to appeal as governed by the APA, and the Board acts in a judicial or quasi-judicial capacity, rather than a day-to-day administrative capacity, when it reviews a petition for closure of an isolated school. *Walker v. Ark. State Bd. of Educ.*, 2010 Ark. 277, 365 S.W.3d 899 (2010).

Cited: *Dep't of Human Servs. v. Parker*, 88 Ark. App. 222, 197 S.W.3d 33 (2004); *Ark. Hearing Instrument Dispenser Bd. v. Vance*, 359 Ark. 325, 197 S.W.3d 495 (2004); *Parkman v. Sex Offender Screening & Risk Assessment Comm.*, 2009 Ark. 205, 307 S.W.3d 6 (2009).

25-15-202. Definitions.

As used in this subchapter:

(1)(A) "Adjudication" means an agency process for the formulation of an order.

(B) "Adjudication" does not include inmate disciplinary proceedings conducted by the Department of Correction and the Department of Community Correction;

(2)(A) "Agency" means a board, commission, department, officer, or other authority of the government of the State of Arkansas, whether within, or subject to review by, another agency, except the General Assembly, the courts, and Governor.

(B) The word "agency" shall include the Division of Child Care and Early Childhood Education of the Department of Human Services and the Child Care Appeal Review Panel for purposes of administrative appeal.

(C) The word "agency" shall not include the Arkansas Public Service Commission, the Arkansas Pollution Control and Ecology Commission, the Workers' Compensation Commission, and the Department of Workforce Services, as the existing laws governing those agencies provide adequate administrative procedures for those agencies.

(D) This subchapter does not repeal delegations of authority as provided by law;

(3) “Financial impact statement” means a realistic statement of a new or increased cost or obligation of complying with a proposed rule to a:

(A) Private individual, entity, and business; and

(B) State, county, and municipal government;

(4) “License” includes an agency permit, certificate, approval, registration, charter, or similar form of permission required by law;

(5) “Licensing” means an agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, limitation, or amendment of a license;

(6) “Order” means the final disposition of an agency in any matter other than rule making, including licensing and rate making, in which the agency is required by law to make its determination after notice and hearing;

(7) “Party” means a person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, in an agency proceeding;

(8) “Person” means an individual, partnership, corporation, association, or public or private organization of any character;

(9)(A) “Rule” means an agency statement of general applicability and future effect that implements, interprets, or prescribes law or policy, or describes the organization, procedure, or practice of an agency and includes, but is not limited to, the amendment or repeal of a prior rule.

(B) “Rule” does not mean:

(i) Statements concerning the internal management of an agency and that do not affect the private rights or procedures available to the public;

(ii) Declaratory rulings issued pursuant to § 25-15-206; or

(iii) Intra-agency memoranda; and

(10) “Rule making” means an agency process for the formulation, amendment, or repeal of a rule.

History. Acts 1967, No. 434, § 1; 1971, No. 316, § 1; 1977, No. 349, § 1; 1979, No. 324, § 15; A.S.A. 1947, §§ 5-701, 5-701.1; Acts 1997, No. 1149, § 1; 1999, No. 1222, § 17; 2001, No. 1648, § 1; 2003, No. 350, § 1; 2013, No. 759, § 3.

Amendments. The 2013 amendment inserted (3), redesignated the remaining subsections accordingly, and made stylistic changes to the section.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2003 Arkansas General Assembly, State Government, Administrative Procedures Act, 26 U. Ark. Little Rock L. Rev. 493.

Annual Survey of Caselaw, Administrative Law, 26 U. Ark. Little Rock L. Rev. 791.

CASE NOTES

ANALYSIS

Adjudication.

Agency.

Rule.

Adjudication.

State employee's appeal from her termination by a state school for the deaf could not be heard due to lack of jurisdiction because there was no judicial review of such termination decisions absent a public policy exception; such decisions were legislative rather than adjudicatory. The school's alleged violation of its non-mandatory reduction policy did not rise to the level of a public policy violation. *Tripcony v. Ark. Sch. for the Deaf*, 2012 Ark. 188, — S.W.3d — (2012).

Inmate's petition failed to sustain a claim under § 25-15-212 to support a judicial review of the Arkansas Department of Corrections' decision because it did not set forth facts to show deprivation of a liberty interest under the Due Process Clause; the inmate alleged only a breach of contractual terms and that the DOC rules interfered with his right to correspond or otherwise communicate with persons not in prison. *Renfro v. Smith*, 2013 Ark. 40, — S.W.3d — (2013).

Agency.

Arkansas Department of Health and Human Services (DHHS) is an agency under § 25-15-202(2)(A); therefore, a decision from the DHHS to leave a person's name on the Arkansas Child Maltreatment Central Registry was reviewed under the standards in § 25-15-212(h)(1), (4). *Vancleave v. Arkansas HHS*, 98 Ark. App. 299, 254 S.W.3d 770 (2007).

Rule.

Recommendations by a state board as to the adoption of a mail order service and change in the reimbursement rates of a pharmacy service plan for state and public school employees did not constitute "rule-making" within the meaning of subsections (8) and (9) of this section, and accordingly, the notice and hearing provisions therein did not have to be complied with; such recommendations were within the board's legislatively mandated duties pursuant to § 21-5-401. *Ark. Pharmacist's Ass'n v. Ark. State & Pub. Sch. Life*, 352 Ark. 1, 98 S.W.3d 27 (2003).

Cited: *Ark. Dep't of Econ. Dev. v. William J. Clinton Presidential Found.*, 364 Ark. 40, 216 S.W.3d 119 (2005); *Munson v. Ark. Dep't of Corr. Sex Offender Screening*, 369 Ark. 290, 253 S.W.3d 901 (2007); *Walker v. Ark. State Bd. of Educ.*, 2010 Ark. 277, 365 S.W.3d 899 (2010).

25-15-204. Rules — Procedure for adoption.

(a) Prior to the adoption, amendment, or repeal of a rule, the agency shall:

(1)(A)(i) Give at least thirty (30) days' notice of its intended action.

(ii) The thirty-day period shall begin on the first day of the publication of notice.

(B) The notice shall include:

(i) A statement of the terms or substance of the intended action or a description of the subjects and issues involved; and

(ii) The time, location, and manner in which an interested person may present his or her position on the intended action of the agency or on the issues related to the intended action of the agency.

(C) The notice shall be mailed to:

(i) A person specified by law; and

(ii) A person who has requested advance notice of rule-making proceedings.

(D) Unless otherwise provided by law, the notice shall be published:

(i) In a newspaper of general daily circulation for three (3) consecutive days and, when appropriate, in those trade, industry, or professional publications that the agency may select; and

(ii) By the Secretary of State on the Internet for thirty (30) days under § 25-15-218;

(2)(A) Afford all interested persons reasonable opportunity to submit written data, views, or arguments, orally or in writing.

(B) The agency shall grant an opportunity for an oral hearing if requested by twenty-five (25) persons, by a governmental subdivision or agency, or by an association having at least twenty-five (25) members.

(C) The agency shall fully consider all written and oral submissions respecting the proposed rule before finalizing the language of the proposed rule and filing the proposed rule as required by subsection (e) of this section.

(D) If an interested person requests a statement of the reasons for and against the adoption of a rule before adoption or within thirty (30) days after adoption, the agency shall issue a concise statement of the principal reasons for and against its adoption, incorporating its reasons for overruling the considerations urged against its adoption.

(E) When rules are required by law to be made on the record after opportunity for an agency hearing, the provisions of that law shall apply in place of this subdivision (a)(2); and

(3) Consider the following factors:

(A) Whether the agency is required by statute to adopt the proposed rule, whether by a specific date, and whether the agency has discretion to promulgate rules;

(B) Other statutes relevant to the proposed rule and its alternatives;

(C) The specific nature and significance of the problem the agency addresses with the proposed rule including without limitation:

(i) The nature and degree of the risks the problem poses;

(ii) The priority of addressing those risks as opposed to other matters or activities within the agency's jurisdiction;

(iii) Whether the problem warrants new agency action; and

(iv) The countervailing risks that may be posed by alternative rules for the agency;

(D) Whether existing rules have created or contributed to the problem the agency is addressing with the proposed rule, and whether those rules could be amended or repealed to address the problem in whole or in part;

(E) Reasonable alternatives to the proposed rule including without limitation:

(i) Adopting no rule;

(ii) Amending or repealing existing rules; and

(iii) Other potential responses that could be taken instead of agency action;

(F) The financial impact of the proposed rule; and

(G) Any other factor relevant to the need for and alternatives to the proposed rule.

(b)(1) An agency shall not adopt, amend, or repeal a rule unless the rule is based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule.

(2) An agency shall adopt the least costly rule considered under this section, unless:

(A) The additional benefits of the more costly rule justify its additional cost;

(B) The agency explains its reason for adoption of the more costly rule in writing;

(C) The reason is based on the interests of public health, safety, or welfare; and

(D) The reason is within the scope of the agency's statutory authority.

(c)(1) If an agency finds that imminent peril to the public health, safety, or welfare or compliance with a federal law or regulation requires adoption of a rule upon less than thirty (30) days' notice and states in writing its reasons for that finding, it may proceed without prior notice or hearing, or upon any abbreviated notice and hearing that it may choose, to adopt an emergency rule.

(2) Except as provided in § 5-64-204, the rule may be effective for no longer than one hundred twenty (120) days.

(3) If, after the expiration of the effective period of an emergency rule, an agency wishes to adopt a successive emergency rule that is identical or substantially similar to the expired emergency rule, the agency shall not adopt the successive emergency rule earlier than thirty (30) days after the expiration of the emergency rule.

(d)(1) A person may petition an agency for the issuance, amendment, or repeal of a rule.

(2) Within thirty (30) days after submission of a petition, the agency shall:

(A) Deny the petition, stating in writing its reasons for the denial; or

(B) Initiate rule-making proceedings.

(e)(1)(A) An agency shall file with the Secretary of State, the Arkansas State Library, and the Bureau of Legislative Research a copy of each rule proposed by it and a financial impact statement for the proposed rule.

(B) A rule shall be filed in compliance with this section and with §§ 25-15-218 and 10-3-309.

(2) The Secretary of State shall keep a register of the rules open to public inspection, and it shall be a permanent register.

(3) If the purpose of a state agency rule is to implement a federal rule or regulation, the financial impact statement shall include:

(A) The cost to implement the federal rule or regulation; and

(B) The additional cost of the state rule.

(4)(A) If a financial impact statement reveals a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined, the agency shall file written findings at the time of filing the financial impact statement.

(B) The written findings shall be filed simultaneously with the financial impact statement and shall include without limitation:

- (i) A statement of the rule's basis and purpose;
- (ii) The problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;
- (iii) A description of the factual evidence that:
 - (a) Justifies the agency's need for the proposed rule; and
 - (b) Describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;

(iv) A list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;

(v) A list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;

(vi)(a) A statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule.

(b) If existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and

(vii) An agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including without limitation whether:

- (a) The rule is achieving the statutory objectives;
- (b) The benefits of the rule continue to justify its costs; and
- (c) The rule can be amended or repealed to reduce costs while continuing to achieve the statutory objections.

(f)(1)(A) Each rule adopted by an agency is effective thirty (30) days after filing of the final rule with the Secretary of State unless a later date is specified by law or in the rule itself.

(B) A final rule shall not be filed until the thirty-day public comment period required under subdivision (a)(1)(A) of this section has expired.

(C)(i) After the expiration of the thirty-day public comment period and before the effective date of the rule, the agency promulgating the rule shall take appropriate measures to make the final rule known to the persons who may be affected by the rule.

(ii) Appropriate measures shall include without limitation posting the following information on the agency's website:

- (a) The final rule;
- (b) Copies of all written comments submitted to the agency regarding the rule;

(c) A summary of all written and oral comments submitted to the agency regarding the rule and the agency's response to those comments;

(d) A summary of the financial impact of the rule; and

(e) The proposed effective date of the final rule.

(2)(A)(i) However, an emergency rule may become effective immediately upon filing or at a stated time less than thirty (30) days after filing if the agency finds that this effective date is necessary because of imminent peril to the public health, safety, or welfare.

(ii) The agency's finding, a brief statement of the reasons for the finding, and the financial impact statement shall be filed with the rule.

(B) The agency shall take appropriate measures to make emergency rules known to the persons who may be affected by the emergency rules.

(g) A rule adopted after June 30, 1967 is not valid unless adopted and filed in substantial compliance with this section.

(h)(1) In a proceeding that questions the existence of imminent peril to the public health, safety, or welfare, a written finding by an agency that adopting an emergency rule was necessary to avoid the loss of federal funding or certification establishes a prima facie case of the existence of imminent peril to the public health, safety, or welfare.

(2) The burden of proof shifts to the challenger to rebut the existence of the condition by a preponderance of the evidence.

History. Acts 1967, No. 434, § 3; 1979, No. 62, § 1; 1985, No. 139, § 1; A.S.A. 1947, § 5-703; Acts 1989, No. 932, §§ 1, 2; 1993, No. 1106, § 1; 1995, No. 459, § 3; 1995, No. 884, §§ 1-3; 1995, No. 1104, § 1; 1997, No. 406, § 1; 1997, No. 533, § 4; 2001, No. 1648, § 3; 2003, No. 1478, § 1; 2005, No. 1259, § 1; 2006 (1st Ex. Sess.), No. 38, § 3; 2007, No. 143, § 2; 2011, No. 587, § 2; 2011, No. 1015, § 1; 2011, No. 1016, § 1; 2013, No. 759, § 4; 2013, No. 1057, § 1.

Amendments. The 2011 amendment by No. 587 added "Except as provided in § 5-64-201" at the beginning of (b)(2).

The 2011 amendment by No. 1015 added the (e)(1)(A) designation; in

(e)(1)(A), substituted "thirty (30)" for "ten (10)" and inserted "of the final rule"; added (e)(1)(B) and (C); and substituted "thirty (30)" for "ten (10)" in (e)(2)(A)(i).

The 2011 amendment by No. 1016 added (b)(3).

The 2013 amendment by No. 759 rewrote (a)(3); inserted (b) and redesignated the remaining subsections accordingly; rewrote (e)(3); added (e)(4); and, in (f) added "A summary of the financial impact of the rule" and "and the financial impact statement."

The 2013 amendment by No. 1057 inserted "with the Secretary of State" in (f)(1)(A).

CASE NOTES

Applicability.

Arkansas Health Services Commission's new rule allowing the Commission to disregard the overall county occupancy one time in order to approve a 70-bed nursing home facility in a single county

where the projected need for the county exceeded the "existing" beds by 250 or more beds was not arbitrary special or local legislation, because it was conceivable that other counties in the state would, in the future, come under the rule's

provisions. Ark. Health Servs. Comm'n v. Reg'l Care Facilities, Inc., 351 Ark. 331, 93 S.W.3d 672 (2002).

25-15-205. Rules — "The Arkansas Register".

(a)(1) The Secretary of State shall compile, index, and publish on its website a document to be known as "The Arkansas Register".

(2) "The Arkansas Register" shall contain all adopted rules of any agency.

(b) The Secretary of State shall update "The Arkansas Register" at least monthly, setting forth a synopsis of rules filed by agencies.

(c)(1) If requested, a printed copy of "The Arkansas Register" shall be furnished to all state agencies and other persons at prices fixed by the Secretary of State to cover publication and mailing costs.

(2) Proceeds from the sale of "The Arkansas Register" shall be deposited in the Constitutional Officers Fund and the State Central Services Fund in the State Treasury.

(d) A progress report on publication and distribution shall be provided to the Legislative Council annually.

History. Acts 1967, No. 434, § [17], as added by Acts 1979, No. 818, § 1; 1977, No. 720, § 3; A.S.A. 1947, §§ 5-704.1, 5-704.2; Acts 1991, No. 1075, § 14; 2001, No. 1648, § 4; 2003, No. 1478, § 2; 2013, No. 1057, § 2.

Amendments. The 2013 amendment rewrote (a); in (b), substituted "update" for "publish" and deleted the former last sentence, which read "A cumulative index shall be published annually"; and added "If requested, a printed copy of" in (c)(1).

25-15-207. Rules — Actions for declaratory judgments.

CASE NOTES

ANALYSIS

Applicability.
Administrative Remedies.

Applicability.

Where a church and its affiliated university sought an exception from certification requirements of the Arkansas Department of Higher Education, the church could have brought a declaratory action to determine whether or not the exception for programs that were predominantly religious in nature applied; thus, the church was not entitled to a writ of mandamus. *Axley v. Hardin*, 353 Ark. 529, 110 S.W.3d 766 (2003).

Administrative Remedies.

Where the Arkansas Tobacco Control Board charged a company with violating the anti-rebating provisions of the Arkansas Unfair Cigarette Sales Act, § 4-75-

708(b), the company was required to exhaust its administrative remedies before seeking declaratory relief in the form of preliminary and permanent injunctions in the circuit court; moreover, company's constitutional argument could be raised and developed at the administrative level. *McLane S., Inc. v. Davis*, 80 Ark. App. 30, 90 S.W.3d 16 (2002).

Appellants were not required to exhaust administrative remedies before they filed a lawsuit to challenge the constitutionality of § 200.3.2 of the Minimum Licensing Standards for Child Welfare Agencies because appellants, who would all be prohibited under the regulation from becoming foster parents because there were adult homosexuals in their homes, had shown that the threat of injury to them would justify having the regulation reviewed. *Dep't of Human Servs. v. Howard*, 367 Ark. 55, 238 S.W.3d 1 (2006).

Cited: Doe v. Ark. Dep't of Human Comm'n, 364 Ark. 372, 220 S.W.3d 665 Servs., 357 Ark. 413, 182 S.W.3d 107 (2005); Quapaw Care & Rehab. v. Ark. (2004); Ark. Residential Assisted Living Health Servs. Permit Comm'n, 2009 Ark. Ass'n v. Ark. Health Servs. Permit 356, 325 S.W.3d 269 (2009).

25-15-208. Administrative adjudication — Procedures generally.

(a) In every case of adjudication:

(1) All parties shall be afforded an opportunity for hearing after reasonable notice.

(2) The notice shall include:

(A) A statement of the time, place, and nature of the hearing;

(B) A statement of the legal authority and jurisdiction under which the hearing is to be held;

(C) A short and plain statement of the matters of fact and law asserted.

(3) In every case of adjudication wherein an agency seeks to revoke, suspend, or otherwise sanction a license or permit holder, the agency or its attorney, upon the request of the license or permit holder, must provide the following information prior to conducting a hearing of adjudication:

(A) The names and addresses of persons whom the agency intends to call as witnesses at any hearing;

(B) Any written or recorded statements and the substance of any oral statements made by the license or permit holder, or a copy of the same;

(C) Any reports or statements of experts, made in connection with the particular case, including results of physical or mental examinations, scientific tests, experiments, or comparisons, or copies of the same;

(D) Any books, papers, documents, photographs, or tangible objects which the agency intends to use in any hearing or which were obtained from or belong to the license or permit holder, or copies of the same;

(E) Disclosure shall not be required of research or records, correspondence, reports, or memoranda to the extent that they contain the opinions, theories, or conclusions of the attorney for the agency or members of his staff or other state agents.

(4) Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.

(5) The record shall include:

(A) All pleadings, motions, and intermediate rulings;

(B) Evidence received or considered, including, on request of any party, a transcript of oral proceedings or any part thereof;

(C) A statement of matters officially noticed;

(D) Offers of proof, objections, and rulings thereon;

(E) Proposed findings and exceptions thereto; and

(F) All staff memoranda or data submitted to the hearing officer or members of an agency in connection with their consideration of the case.

(6) Findings of fact shall be based exclusively on the evidence and on matters officially noticed.

(7)(A) If the agency is authorized by law to issue subpoenas for the attendance and testimony of witnesses and the production of documents or things, then any party shall to the same extent be so authorized, and the agency shall issue a subpoena forthwith on written application thereof.

(B) A subpoena may be served in the manner as now provided for by statute or rule for the service of subpoenas in civil cases or by any form of mail addressed to the person to be served with a return receipt requested and delivery restricted to the addressee or agent of the addressee.

(b) Nothing in this subchapter shall prohibit informal disposition by stipulation, settlement, consent order, or default.

History. Acts 1967, No. 434, § 8; A.S.A. 1947, § 5-708; Acts 1993, No. 1083, § 1; 2011, No. 717, § 1.

Amendments. The 2011 amendment added the (a)(7)(A) designation and (a)(7)(B).

CASE NOTES

Cited: Holloway v. State Bd. of Architects, 79 Ark. App. 200, 86 S.W.3d 391 (2002); Nash v. Ark. Elevator Safety Bd., 370 Ark. 345, 259 S.W.3d 421 (2007);

Gilmore v. Ark. Bd. of Registration for Prof'l Eng'rs & Land Surveyors, 2011 Ark. App. 139, 381 S.W.3d 860 (2011).

25-15-209. Administrative adjudication — Communication by decision maker.

CASE NOTES

ANALYSIS

Communication Permitted.
Communication prohibited.
Evidence.

Communication Permitted.

Subsection (b) of this section expressly allows communications between agency members. Arkansas Appraiser Licensing & Certification Bd. v. Fletcher, 326 Ark. 628, 933 S.W.2d 789 (1996).

Communication prohibited.

Subsection (a) of this section does not prohibit business relationships between

agency members; it prohibits communications about issues relating to a particular adjudication proceeding. Arkansas Appraiser Licensing & Certification Bd. v. Fletcher, 326 Ark. 628, 933 S.W.2d 789 (1996).

Evidence.

Violations of subsection (a) must be established by proof of the existence and content of the alleged ex parte communications. Arkansas Appraiser Licensing & Certification Bd. v. Fletcher, 326 Ark. 628, 933 S.W.2d 789 (1996).

25-15-210. Administrative adjudication — Decisions.**CASE NOTES****ANALYSIS**

In General.

—Noncompliance.

Findings and Conclusions.

—Noncompliance.

—Sufficiency.

In General.**—Noncompliance.**

Where administrative board's findings did not state how the chiropractor's ad violated the board's regulation against deceptive advertising, but merely recited conclusions regarding the alleged violations, the case had to be remanded for further findings of fact and conclusions of law. *Nesterenko v. Arkansas Bd. of Chiropractic Exam'rs*, 76 Ark. App. 561, 69 S.W.3d 459 (2002).

Findings and Conclusions.

After an appeal of a sex offender adjudication was dismissed on the ground that it could not be concluded that appellant had received notice of the Arkansas Department of Corrections Sex Offender Screening and Risk Assessment Committee's (SOSRA's) final decision, the court denied SOSRA's petition for rehearing because § 12-12-922(b)(6)(A) and (7)(A) required SOSRA to send "findings" to appellant, which proscription was consistent with the requirements of the Arkansas Administrative Procedure Act under subdivision (b)(2) of this section. *Munson v. Ark. Dep't of Corr. Sex Offender Screening*, 369 Ark. 290, 253 S.W.3d 901 (2007).

Although the Alcoholic Beverage Control Board failed to make findings of fact and conclusions of law as to the "sale" of liquor permits, appellants never requested or offered any proposed findings on this issue and merely raised the contention in closing. *Ark. Bev. Retailers Ass'n v. Langley*, 2011 Ark. App. 259 (2011).

Because the Arkansas Health Services Permit Commission did not set forth any findings of fact or conclusions of law to support its decision to grant the transfer of a permit of approval, in accordance with subdivision (b)(2) of this section, the mat-

ter had to be remanded. *Twin Rivers Health & Rehab, LLC v. Ark. Health Servs. Permit Comm'n*, 2012 Ark. 15, — S.W.3d — (2012).

Because the Arkansas Motor Vehicle Commission failed in its obligation to make sufficient findings of fact relevant to the contested issue of what constituted the current model year, the supreme court could not determine whether the Commission had resolved that issue in conformity with the law. *Voltage Vehicles v. Ark. Motor Vehicle Comm'n*, 2012 Ark. 386, — S.W.3d — (2012).

—Noncompliance.

Fireman's appeal from his termination from the city fire department was dismissed for want of jurisdiction as the civil service commission, in affirming the termination, made no written order nor any findings of fact or conclusions of law as required by § 14-51-308(e)(1)(B)(ii); accordingly, the matter was reversed and remanded so that the trial court could dismiss the appeal without prejudice, allowing the fireman to refile his appeal with the circuit court after the commission entered a written order. *Lawrence v. City of Texarkana*, 364 Ark. 466, 221 S.W.3d 370 (2006).

Remand of a police officer's application for retirement benefits was required because the administrative board had not made appropriate findings of fact as required by subdivision (b)(2) of this section. While the board's order had the labels "findings of fact" and "conclusions of law," it was merely a procedural history of the administrative process and contained no information stating the facts upon which the board made its decision. *Spriggs v. Ark. Local Police & Fire Ret. Bd.*, 2010 Ark. App. 197, — S.W.3d — (2010).

—Sufficiency.

Alcoholic Beverage Control Board's findings and conclusions went beyond a mere recitation of evidence and were, thus, adequate to permit the appellate court to undertake a proper review of the board's ruling. *Vallaroutto v. Alcoholic Bev. Control Bd.*, 81 Ark. App. 318, 101 S.W.3d 836 (2003).

Arkansas Board of Architecture's findings that an engineer was acting in the capacity of an architect without the benefit of a license was supported by sufficient facts relevant to the contested issue so that an appellate court could determine whether the board had resolved those issues in conformity with the law. *Holloway v. Ark. State Bd. of Architects*, 352 Ark. 427, 101 S.W.3d 805 (2003).

Where the Arkansas State Board of Chiropractic Examiners' findings of fact that a physical therapist's treatment of two patients consisted of "popping" their spines included sufficient details of the witnesses's testimony upon which the Board reasonably relied in reaching its

decision, those findings were sufficient under subsection (b) of this section. *Teston v. Ark. State Bd. of Chiropractic Examiners*, 361 Ark. 300, 206 S.W.3d 796 (2005), cert. denied, *Teston v. Ark. State Bd. of Chiropractic Exam'rs*, 546 U.S. 960, 126 S. Ct. 480, 163 L. Ed. 2d 363 (2005).

Trial court erred in affirming the Board's order suspending appraiser's license as the Board did not make the necessary findings of fact to support its order that the appraiser had violated certain appraisal standards, as required by subdivision (b)(2) of this section. *Chandler v. Ark. Appraisers Licensing & Certification Bd.*, 92 Ark. App. 423, 214 S.W.3d 861 (2005).

25-15-212. Administrative adjudication — Judicial review.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Annual Survey of Case Law: Practice, Procedure,

and Courts, 29 U. Ark. Little Rock L. Rev. 905.

CASE NOTES

ANALYSIS

In General.
Applicability.
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Standing.

In General.

Because there had been no adjudication before the administrative agency, there was no final agency action to be reviewed pursuant to this section and the Arkansas Administrative Procedure Act, § 25-15-201 et seq., did not apply. *Ark. Dep't of Econ. Dev. v. William J. Clinton Presidential Found.*, 364 Ark. 40, 216 S.W.3d 119 (2005).

Under the flexible Mathews factors, the procedural avenues afforded by the Sex

Offender Registration Act, § 12-12-901 et seq., were constitutionally adequate and provided notice to offenders of the risk assessment process and a meaningful opportunity to be heard; the Registration Act provides for an adversarial judicial review of the Committee's administrative review decision, with the full procedural guarantees set forth in the Arkansas Administrative Procedure Act, and it was unlikely that a right to counsel or to confront witnesses at the initial assessment stage would have appreciably reduced the risk of an erroneous determination. *Weems v. Little Rock Police Dep't*, 453 F.3d 1010 (8th Cir. 2006), rehearing denied, *Weems v. Johnson*, — F.3d —, 2006 U.S. App. LEXIS 21238 (8th Cir. Aug. 18, 2006), cert. denied, *Weems v. Johnson*, 550 U.S. 917, 127 S. Ct. 2128, 167 L. Ed. 2d 862 (2007).

Applicability.

Reading the Brine Production Act, § 15-76-301 et seq., with the Administrative Procedures Act, § 25-15-212(g), it appeared that the correct procedure for the circuit court to follow was to limit its review to the record and allow the parties to introduce evidence only for the purpose

of showing the Arkansas Oil and Gas Commission's order was invalid or unreasonable; the Brine Production Act does not allow a de novo review of orders issued by the Commission, but permits additional evidence relating to procedural irregularities before the Commission or where there was good reason for failure to present that evidence to the Commission. *Great Lakes Chem. Corp. v. Bruner*, 368 Ark. 74, 243 S.W.3d 285 (2006).

Arkansas Department of Health and Human Services (DHHS) is an agency under § 25-15-202(2)(A); therefore, a decision from the DHHS to leave a person's name on the Arkansas Child Maltreatment Central Registry was reviewed under the standards in § 25-15-212(h)(1), (4). *Vancleave v. Arkansas HHS*, 98 Ark. App. 299, 254 S.W.3d 770 (2007).

Although a local utility customer failed to file a notice of appeal to the circuit court as required under Ark. Dist. Ct. R. 9, which applied to an appeal from the municipal utility's decision, but instead filed a complaint alleging that it was seeking judicial review of a final administrative order, the complaint properly described the final administrative decision and specified the date of that decision as required. *Mt. Pure, LLC v. Little Rock Wastewater Util.*, 2011 Ark. 258, 383 S.W.3d 347 (2011).

Adjudication.

After an appeal of a sex offender adjudication was dismissed on the ground that it could not be concluded that appellant had received notice of the Arkansas Department of Corrections Sex Offender Screening and Risk Assessment Committee's (SOSRA's) final decision, the court denied SOSRA's petition for rehearing because § 12-12-922(b)(6)(A) and (7)(A) required SOSRA to send "findings" to appellant, which proscriptioin was consistent with the requirements of the Arkansas Administrative Procedure Act under subsection (a) of this section. *Munson v. Ark. Dep't of Corr. Sex Offender Screening*, 369 Ark. 290, 253 S.W.3d 901 (2007).

State employee's appeal from her termination by a state school for the deaf could not be heard due to lack of jurisdiction because there was no judicial review of such termination decisions absent a public policy exception; such decisions were legislative rather than adjudicatory. The

school's alleged violation of its non-mandatory reduction policy did not rise to the level of a public policy violation. *Tripcony v. Ark. Sch. for the Deaf*, 2012 Ark. 188, — S.W.3d — (2012).

Amended Petition.

There is no prohibition in the Administrative Procedure Act (APA), §§ 25-15-201 to 25-15-217, against the filing of an amended petition; plaintiffs' filing of an amended petition to support its showing of standing to challenge an agency decision, which amended petition was not objected to by the defendants, did not make the petition a nullity under the APA. *Ark. Bev. Retailers Ass'n v. Moore*, 369 Ark. 498, 256 S.W.3d 488 (2007).

Appeal from Circuit Court.

Because an appraiser's argument that the circuit court erred in determining that she was not permitted to present additional evidence before the agency pursuant to the Arkansas Administrative Procedure Act, subsection (f) of this section was not ruled on by the Arkansas Appraiser Licensing and Certification Board; the supreme court was precluded from considering the argument on appeal; at the circuit court's hearing, the appraiser requested the circuit court to remand the case to present additional evidence pursuant to subsection (f), but she failed to obtain a ruling on the issue. *Chandler v. Ark. Appraiser Licensing & Certification Bd.*, 2011 Ark. 519, — S.W.3d — (2011).

Illustrative Case.

Circuit court was without jurisdiction to enjoin a licensing board from having a hearing, where the bail bond company did not receive notice until day before the hearing and sought a continuance, because the bail bond company failed to exhaust its administrative remedies. *Ark. Prof'l Bail Bondsman Licensing Bd. v. Frawley*, 350 Ark. 444, 88 S.W.3d 418 (2002).

Because the Arkansas Soil and Water Conservation Commission acted within its statutory authority under § 15-22-503(e) in approving a water project submitted by a municipality that included a portion of a neighboring city's five-mile extraterritorial planning area, which was not preempted under § 14-56-413 by the neighboring municipality's planning authority in the five-mile area surrounding

its city limits, and because the Commission's decision was supported by substantial evidence, the appellate court affirmed the Commission's order approving the municipality's water development project, as amended, for water plan compliance certification. *Ark. Soil & Water Conservation Comm'n v. City of Bentonville*, 351 Ark. 289, 92 S.W.3d 47 (2002).

Evidence supported the Arkansas State Board of Chiropractic Examiners' finding that physical therapist's treatments, which caused his patients' spines to "pop," were "spinal manipulations" as defined in § 17-81-102(7) and could only be performed by licensed chiropractors. *Teston v. Ark. State Bd. of Chiropractic Examiners*, 361 Ark. 300, 206 S.W.3d 796 (2005), cert. denied, *Teston v. Ark. State Bd. of Chiropractic Exam'rs*, 546 U.S. 960, 126 S. Ct. 480, 163 L. Ed. 2d 363 (2005).

Reduction of sex offender's risk assessment was appropriate as his Level 3 classification was not supported by substantial evidence; the Arkansas Department of Correction Sex Offender Screening and Risk Assessment failed to cite any incident where defendant's answers differed from documents assembled for the interview. *Ark. Dep't of Corr. Sex Offender Screening & Risk Assessment v. Claybaugh*, 93 Ark. App. 11, 216 S.W.3d 134 (2005).

There was sufficient evidence in the record to show that funeral director failed to make reasonable attempts to fulfill the needs and desires of decedent's survivors and that the funeral director entered decedent's house without permission and removed her property; thus, the decision by the Arkansas Board of Embalmers and Funeral Directors to suspend funeral director's license for two years was affirmed. *Ark. Bd. of Embalmers Funeral Dirs. v. Reddick*, 366 Ark. 89, 233 S.W.3d 639 (2006).

Where evidence showed that a physician treated patients for low back pain and he advertised his operation as a pain management clinic, the Arkansas State Medical Board's decision that Ark. State Medical Board Regulation 19 applied to the physician was upheld. *Kale v. Ark. State Med. Bd.*, 367 Ark. 151, 238 S.W.3d 89 (2006).

There was substantial evidence supporting the administrative law judge's finding that the foster mother caused a

nonaccidental physical injury to the child, and therefore the circuit court erred by removing the mother's name from the child maltreatment registry because: (1) the child had bruising on the back of her thighs from the back of her knees to the bottom of her buttocks; (2) there were at least eight to ten bruises, which were evidence by several straight lines, some of which were near the child's vaginal area; (3) there was testimony that the bruises were at least 24 hours old; (4) two of the other children being fostered by the mother told an investigator that she used a switch when administering punishment; and (5) the mother herself stated during the investigation that she had used a switch to swat the child. None of the exceptions to a finding of abuse under § 12-12-503(2)(C) were present. *Dep't of Health & Human Servs. v. R.C.*, 368 Ark. 660, 249 S.W.3d 797 (2007), cert. denied, *R. C. v. Ark. HHS*, 128 S. Ct. 359, 169 L. Ed. 2d 58 (2007).

Arkansas State Board of Collection Agencies' decision that it was unable to pursue money from a surety bond was arbitrary, capricious, and an abuse of discretion because a consent judgment entered in favor of a customer determined that a corporation licensed under § 23-52-107 had charged usurious rates of interest with regards to a deferred presentment agreement, in violation of Arkansas State Board of Collection Agencies Regulation XXI and Ark. Const., Art. 19, § 13(a). *Staton v. Ark. State Bd. of Collection Agencies*, 372 Ark. 387, 277 S.W.3d 190 (2008).

Approval of a private-club permit was proper because a club established that it had a nonprofit purpose other than the consumption of alcohol under § 3-9-202(12)(A)(i) where it operated in conjunction with a restaurant and was designed to enhance the dining experience. Moreover, the Arkansas Alcoholic Beverage Control Division Board's interpretation of § 3-9-202(12)(A)(i) was entitled to deference, and arguments relating to nonprofit status that were not fully developed before the Board were not preserved for appellate review. *Barnes v. Ark. Dep't of Fin. & Admin.*, 2012 Ark. App. 237, — S.W.3d — (2012).

Inmates.

Inmate's petition failed to sustain a claim under this section to support a judi-

cial review of the Arkansas Department of Corrections' decision because it did not set forth facts to show deprivation of a liberty interest under the Due Process Clause; the inmate alleged only a breach of contractual terms and that the DOC rules interfered with his right to correspond or otherwise communicate with persons not in prison. *Renfro v. Smith*, 2013 Ark. 40, — S.W.3d — (2013).

Judicial-Discipline Matters.

The Arkansas Administrative Procedure Act (§ 25-15-201 et seq.) is inapplicable to judicial-discipline matters under subdivision (h)(4) of this section. *Ark. Judicial Discipline & Disability Comm'n v. Proctor*, — Ark. —, 360 S.W.3d 61 (2010), cert. denied, — U.S. —, 130 S. Ct. 3516, 177 L. Ed. 2d 1093 (2010).

Jurisdiction.

There was no final agency action necessary for purposes of judicial review under this section because a doctor voluntarily surrendered the doctor's medical license before the board could render a decision on the doctor's requests for a closed hearing and voluntary restriction of the doctor's license; the circuit court correctly found that it lacked jurisdiction. *Baber v. Ark. State Med. Bd.*, 2010 Ark. 243, 368 S.W.3d 897 (2010).

There can be no judicial review pursuant to subdivision (h)(3) of this section when the circuit court enjoins an agency from conducting a hearing, thereby preventing the agency from making a decision regarding a person's request for a continuance. *Ark. Prof'l Bail Bondsman Licensing Bd. v. Frawley*, 350 Ark. 444, 88 S.W.3d 418 (2002).

Reviewing court lacked jurisdiction to consider the supplier's appeal, because the circuit court lacked subject-matter jurisdiction over the matter, when the decision of the Office of State Procurement did not emanate from a hearing and the Office did not issue an order containing any findings of fact; administratively, the Office merely determined that the supplier's protest could not be heard, therefore, the decision did not come within the purview of the Arkansas Administrative Procedure Act, and thus the circuit court lacked jurisdiction to review it. *Fatpipe, Inc. v. State*, 2012 Ark. 248, — S.W.3d — (2012).

Procedural Irregularities.

Trial court erred in dismissing as untimely appellant's petition for judicial review of an assessment declaring appellant to be a sex offender where the record did not contain any evidence that letters from the Arkansas Department of Corrections Sex Offender Screening and Risk Assessment Committee were sent to appellant by certified mail, as required by § 12-12-922(b)(7)(A)(i). Without proof that the letters were properly sent, it could not be said that either letter constituted a final decision under § 25-15-212(b). *Munson v. Arkansas Dep't of Corr. Sex Offender Screening & Risk Assess.*, — Ark. —, — S.W.3d —, 2007 Ark. LEXIS 226 (Mar. 22, 2007).

Issuance of a commercial disposal well permit was made upon unlawful procedure and was thus subject to reversal under subdivision (h)(3) of this section because the Arkansas Oil and Gas Commission failed to comply with its own rules pursuant to § 15-71-111(a)(3) when it did not require timely proof of financial assurance under Ark. Oil & Gas Comm'n Rule H-1. *Capstone Oilfield Disposal of Ark., Inc. v. Pope County*, 2012 Ark. App. 231, — S.W.3d — (2012).

Record.

Where the parties agreed not to submit medical records as part of the administrative record in a case involving the operation of a pain management program by a physician, it was improper to charge the physician for copying costs. *Kale v. Ark. State Med. Bd.*, 367 Ark. 151, 238 S.W.3d 89 (2006).

Scope of Review.

Substantial evidence supported the decision rendered by The Arkansas Department of Human Services which gradually cut the assigned number of hours of private-duty nursing care which was medically necessary for a patient's care, based on the last documented prescription the Department received. *In re Brandenburg*, 83 Ark. App. 298, 126 S.W.3d 732 (2003).

Decision by the Department of Human Services are governed by the Administrative Procedure Act; thus, the appellate court reviewed the decision of an agency who held that a school principal had abused a child when paddling him for discipline, rather than the trial court de-

cision, to see if it was supported by substantial evidence. *Ark. Dep't of Human Servs. v. Holman*, 96 Ark. App. 243, 240 S.W.3d 618 (2006).

In conducting review, pursuant to this section, of a decision of the Arkansas State Medical Board, which revoked a physician's license based on a finding that he violated Regulation 2.7 by becoming sexually involved with a patient, the court found substantial evidence to uphold the decision because the evidence showed that the physician became romantically involved with a patient and subsequently ordered prescription medication for her; however, revocation of the physician's license to practice under § 17-95-409 was arbitrary and capricious based on the physician's unblemished professional record and based on the fact that he did not try to willfully violate the Regulations. Thus, the revocation was modified to a one-year suspension. *Collie v. Ark. State Med. Bd.*, 370 Ark. 180, 258 S.W.3d 367 (2007).

Section 23-48-603 did not allow the Arkansas Bank Commissioner to award interest to dissenting shareholders for the period between the date the surviving bank tendered an offer of the fair value of the shares, until the final determination of the value of the shares after the appraisal process, because the Arkansas General Assembly did not grant the Commissioner the authority to award either prejudgment or postjudgment interest under § 23-48-603. *Brookshire v. Adcock*, 2009 Ark. 207, 307 S.W.3d 22 (2009).

Appellate court could not reverse a decision of the Arkansas Department of Human Services interpreting its Medicaid reimbursement rules because the agency's interpretation was neither too narrow nor clearly wrong and its denial of a health services company's request for reimbursement was supported by substantial evidence. *Northport Health Servs. of Ark. v. Ark. Dep't of Human Servs.*, 2009 Ark. 619, 363 S.W.3d 308 (2009).

There was no error in suspending the licensee's funeral director license for one year and imposing a \$1,500 fine, because the evidence was sufficient to support the determination by the Board of Embalmers and Funeral Directors that the licensee violated § 20-18-303, when the Division of Vital Records repeatedly and fruitlessly contacted the licensee to obtain the demanded information and death certificate,

and despite an offer by the Division to help facilitate the filing, the Division was required to take the extraordinary step of issuing the death certificate under its own authority. *Collins v. Ark. Bd. of Embalmers & Funeral Dirs.*, 2009 Ark. App. 498, 324 S.W.3d 716 (2009).

In an appeal by parents under this section of the Arkansas State Board of Education's decision to close a K-12 school campus under § 6-20-602(a), the state's duty to provide an adequate education, its obligation to render a definition of excessive transportation time, and its obligation to adequately fund the transportation needs of school districts were not issues before the court where the state was not a party to the action. *Walker v. Ark. State Bd. of Educ.*, 2010 Ark. 277, 365 S.W.3d 899 (2010).

Decision by the Appraiser Licensing and Certification Board that a real estate appraiser had violated several standards of appraisal practice was properly overturned because the Board's findings of fact did not correlate with its conclusions of law relating to the professional standards that it found that the appraiser had violated. Since the Board's conclusions of law were without adequate corresponding factual support, they lacked substantial evidence and were arbitrary and capricious. *Arkansas Appraiser Licensing v. Quast*, 2010 Ark. App. 511, — S.W.3d — (2010).

Because the Capitol Zoning District Commission's decision denying a property owner's application to install a 48-inch-high fence was supported by substantial evidence, it was not arbitrary and capricious. *Capitol Zoning Dist. Comm'n v. Cowan*, 2012 Ark. App. 619, — S.W.3d —, 2012 Ark. App. LEXIS 732 (Oct. 31, 2012).

There was substantial evidence to support the Capitol Zoning District Commission's decision denying a property owner's application to install a 48-inch-high fence. The owner's property was one of the most historic residences in all of Arkansas, and surrounding properties traditionally had fences at or under 40 inches in height. *Capitol Zoning Dist. Comm'n v. Cowan*, 2012 Ark. App. 619, — S.W.3d —, 2012 Ark. App. LEXIS 732 (Oct. 31, 2012).

There was substantial evidence to support the finding that the prior felony conviction should not be waived to allow the applicant to offer counseling, because the Arkansas Board of Examiners in Counsel-

ing found that the applicant's testimony that there would be no future aberrations in his behavior was not credible. Counseling, 2013 Ark. App. 222, — S.W.3d — (2013).

—Arbitrary, Capricious, Etc.

Even though the director for the Arkansas Tobacco Control Board sent the tobacco company an offer of settlement "recommending" a \$500 fine for the tobacco company which gave unlawful rebates to retailers, and the company accepted the offer, the defense of agency estoppel was not preserved, and because the evidence established that the company had paid rebates to at least 28 Arkansas retail establishments, it was not arbitrary or capricious for the Board to reject the "recommendation" and impose a \$28,000 fine and suspension of the company's permit for six months. *H.T. Hackney Co. v. Davis*, 353 Ark. 797, 120 S.W.3d 79 (2003).

Trial court determined that the administrative law judge acted arbitrarily in determining that the husband's annuity was purchased to assist the institutionalized spouse in qualifying for Medicaid benefits; however, the appellate court reversed and remanded for further findings as the Arkansas Department of Human Services did not properly complete the eligibility worksheet to determine eligibility. *Ark. Dep't of Human Servs. v. Schroder*, 353 Ark. 885, 122 S.W.3d 10 (2003).

Administrative law judge's finding that a stepfather, who acted at the direction of and in concert with the natural mother in disciplining their children with respect to a specific incident, was not entitled to the protection of the reasonable and moderate discipline exception under § 12-12-503(2)(C)(i), was arbitrary, capricious, and an abuse of discretion. *Dep't of Human Servs. v. Parker*, 88 Ark. App. 222, 197 S.W.3d 33 (2004).

—Substantial Evidence.

Circuit court properly reversed an administrative decision that parents neglected their children as there was no substantial evidence to support a finding that the children were placed in danger by the parents by allowing them to spend the night with their step-grandfather, a convicted sex offender, following their grandmother's death, especially where those visits went without any suggestion of

abuse. *Ark. Dep't of Human Servs. v. Bixler*, 91 Ark. App. 277, 210 S.W.3d 135 (2005), rev'd, 364 Ark. 292, 219 S.W.3d 125 (2005).

Substantial evidence did not support the decision placing the employee on the certified nursing abuse registry because the administrative law judge did not make the requisite findings to support the violation she found; the administrative law judge concluded that the employee's conduct was abusive under § 5-28-101(1), without specifying which of the two definitions of abuse in the provision she was applying. *Ark. Dep't of Human Servs. v. Haen*, 81 Ark. App. 171, 100 S.W.3d 740 (2003).

There was substantial evidence to support the Arkansas State Board of Physical Therapy's decision to suspend physical therapist, with probation thereafter, where during the hearing, there was evidence produced that the physical therapist and the patient engaged in kissing, hugging, and heavy petting during the course of her treatment, and there was also testimony that the physical therapist made very intimate and personal comments to the patient during treatment, and the two had intercourse within at least two weeks of the patient's final therapy session. *Williams v. Ark. State Bd. of Physical Therapy*, 353 Ark. 778, 120 S.W.3d 581 (2003).

Standing.

There is no need for Arkansas courts to resort to the requirements for standing under the federal Administrative Procedure Act when determining standing under § 25-15-212(a); a petitioner under the Arkansas Administrative Procedure Act (APA), §§ 25-15-201 to 25-15-217, did not have to show an "injury in fact" and that such injury was within the "zone of interests" sought to be protected, as those terms were used under the federal Administrative Procedure Act, because the Arkansas APA did not have the same requirements as the federal Administrative Procedure Act. *Ark. Bev. Retailers Ass'n v. Moore*, 369 Ark. 498, 256 S.W.3d 488 (2007).

Liquor store retailers' association had standing under § 25-15-212(a) to challenge a decision of the Arkansas Alcoholic Beverage Control Board, which granted permits to a department store, based on

the association's claims of disparate treatment under § 3-4-218 and its members' inability to compete on an equal basis with the store. *Ark. Bev. Retailers Ass'n v. Moore*, 369 Ark. 498, 256 S.W.3d 488 (2007).

In an appeal by parents of the Arkansas State Board of Education's decision to close a K-12 school campus under § 6-20-602(a), the parents' allegation that their children would suffer a negative impact on their academic achievement due to the Board's approval of the school district's petition for closure was sufficient injury to confer standing under this section. *Walker v. Ark. State Bd. of Educ.*, 2010 Ark. 277, 365 S.W.3d 899 (2010).

Cited: *Arkansas Prof'l Bail Bondsman Licensing Bd. v. Oudin*, 348 Ark. 48, 69

S.W.3d 855 (2002); *Van Curen v. Ark. Prof'l Bail Bondsman Licensing Bd.*, 79 Ark. App. 43, 84 S.W.3d 47 (2002); *Holloway v. State Bd. of Architects*, 79 Ark. App. 200, 86 S.W.3d 391 (2002); *Ark. Dep't of Human Servs. v. Campbell*, 87 Ark. App. 206, 189 S.W.3d 495 (2004); *Mann v. Ark. Prof'l Bail Bondsman Licensing Bd.*, 88 Ark. App. 393, 199 S.W.3d 84 (2004); *Batiste v. Ark. Dep't of Human Servs.*, 361 Ark. 46, 204 S.W.3d 521 (2005); *Hanks v. Sneed*, 366 Ark. 371, 235 S.W.3d 883 (2006); *Linell v. Norris*, — Ark. —, 320 S.W.3d 642 (2009); *Gilmore v. Ark. Bd. of Registration for Prof'l Eng'rs & Land Surveyors*, 2011 Ark. App. 139, 381 S.W.3d 860 (2011); *Hester v. Ark. Prof'l Bail Bondsman Licensing Bd.*, 2011 Ark. App. 389, 383 S.W.3d 925 (2011).

25-15-213. Hearings generally.

CASE NOTES

ANALYSIS

Construction.

Evidence.

Failure to File Affidavit.

Respondent's Rights.

Construction.

This section suggests that one is entitled to a hearing in person, with "in person" meaning that the petitioner, respondent, witnesses, and the hearing officer are in one location; thus, the circuit court properly concluded that a telephone hearing was not sufficient in a case involving the placement of a name on the child maltreatment registry. *Ark. Dep't of Human Servs. v. J.N.*, 96 Ark. App. 319, 241 S.W.3d 293 (2006).

Evidence.

In a prospective buyer's challenge to a vehicle manufacturer's determination that the buyer was unqualified to purchase a dealership, a hearing officer's exclusion of a letter that could have been used for impeachment purposes as to allegations of past warranty fraud was prejudicial under subdivision (5) of this

section. *Ford Motor Co. v. Ark. Motor Vehicle Comm'n*, 357 Ark. 125, 161 S.W.3d 788 (2004).

Failure to File Affidavit.

Since a surveyor failed to file an affidavit of bias or disqualification under subdivision (2)(C) of this section, he forfeited any argument regarding the bias in his hearing. *Gilmore v. Ark. Bd. of Registration for Prof'l Eng'rs & Land Surveyors*, 2011 Ark. App. 139, 381 S.W.3d 860 (2011).

Respondent's Rights.

Order requiring the Arkansas Department of Health and Human Services to pay for an attorney for a child in its custody who had been accused of sexual misconduct was upheld where the child was entitled to an attorney under subdivision (1) of this section; providing the child with an attorney, in order to keep the child off the sex offender list, would greatly assist in the child's adoption. *Ark. HHS v. C.M.*, 100 Ark. App. 414, 269 S.W.3d 387 (2007).

Cited: *Capstone Oilfield Disposal of Ark., Inc. v. Pope County*, 2012 Ark. App. 231, — S.W.3d — (2012).

25-15-214. Failure of agency to act — Action by injured party.**CASE NOTES****Applicability.**

Appellees' requests for injunctive relief made in their complaint and subsequent amended complaints clearly sought to seek control the actions of the Arkansas Department of Environmental Quality (ADEQ); appellees' suit was barred by the sovereign-immunity doctrine because it had not been waived by this section; be-

cause specific procedures were provided for elsewhere, the Arkansas Administrative Procedures Act did not apply to the ADEQ. *Ark. Dep't of Env'tl. Quality v. Al-Madhoun*, 374 Ark. 28, 285 S.W.3d 654 (2008).

Cited: *Dep't of Human Servs. v. Parker*, 88 Ark. App. 222, 197 S.W.3d 33 (2004).

25-15-216. Review of agency rules.

(a) As soon as is practicable after each regular session and fiscal session of the General Assembly, each agency shall review any newly enacted laws to determine whether:

- (1) Any existing rule should be repealed or amended; or
- (2) Any new rule should be adopted.

(b) At the conclusion of each review, the agency shall adopt a written report of the result of the review.

(c) A copy of each report shall be maintained as a public record by the agency.

History. Acts 2001, No. 1648, § 8; 2009, No. 962, § 44. inserted "session and fiscal" in the introductory language of (a).

Amendments. The 2009 amendment

25-15-218. Publication on the Internet — Uniform numbering system.

(a)(1) The Secretary of State shall publish on the Internet:

- (A) All adopted rules of each state agency;
- (B) A copy of each rule proposed by a state agency and the financial impact statement for each rule; and
- (C) The notice for the adoption, amendment, or repeal of any rule required to be published on the Internet under § 25-15-204.

(2) The Secretary of State may publish the rules on the Secretary of State's Internet website or may contract with a provider of Internet services to publish the rules on another Internet website.

(3) No fee shall be charged for public access to the rules on the Internet website.

(b) The Secretary of State may omit from publication on its Internet website any rules in which publication would be unduly cumbersome, expensive, or otherwise, so long as its Internet website indicates where and how a copy of the omitted materials may be obtained.

(c) Each state agency shall file its adopted rules, proposed rules, and notices with the Secretary of State in an electronic format acceptable to the Secretary of State.

(d)(1) The Secretary of State shall establish a uniform numbering system for rules of state agencies.

(2) Beginning July 1, 2005, all rules filed with the Secretary of State shall conform with the numbering system.

(3) By July 1, 2005, each state agency shall:

(A) Revise its rules to comply with the numbering system adopted by the Secretary of State; and

(B) Provide the Secretary of State with a complete set of the rules in an electronic format acceptable to the Secretary of State.

(e) The Secretary of State shall adopt rules implementing this section.

History. Acts 2003, No. 1478, § 3.

25-15-219. Publication on the Internet — Meeting dates.

(a)(1) Each agency shall publish on the Internet the date, time, and location of all of the agency's meetings and hearings that are open to the public.

(2) The publication shall be made at www.arkansas.gov.

(b) The agency shall publish the notice not less than three (3) days before the meeting or hearing is scheduled.

(c) This section does not apply to emergency or special meetings that meet the requirements of § 25-19-106(b)(2).

History. Acts 2009, No. 1302, § 1.

SUBCHAPTER 3 — ADMINISTRATIVE RULES THAT IMPACT SMALL BUSINESSES

SECTION.

25-15-301 — 25-15-304. [Repealed.]

Effective Dates. Acts 2007, No. 143, § 3: Feb. 23, 2007. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that small businesses represent a vital part of the economy of the State of Arkansas; that this act will protect small businesses from inadvertent financial harm caused by administrative rules; and that this act should become effective as soon as possible to shield small businesses from potential harm. Therefore, an emergency

is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

25-15-301 — 25-15-304. [Repealed.]

A.C.R.C. Notes. Section 25-15-304 was repealed by Acts 2013, No. 759, § 5 without striking through the section to indicate its repeal.

Publisher's Notes. These sections, concerning definitions, determination of effect of proposed rule on small businesses, economic impact statement and regulatory review committee, were re-

pealed by Acts 2013, No. 759, § 5. The sections were derived from the following sources:

25-15-301. Acts 2007, No. 143, § 1.

25-15-302. Acts 2007, No. 143, § 1.

25-15-303. Acts 2007, No. 143, § 1; 2009, No. 809, § 1.

25-15-304. Acts 2009, No. 809, § 2.

CHAPTER 16

STATE OFFICERS

SUBCHAPTER.

1. GENERAL PROVISIONS. [REPEALED.]
2. GOVERNOR.
5. AUDITOR OF STATE.
6. TREASURER OF STATE.
7. ATTORNEY GENERAL.
9. STATE BOARDS — COMPENSATION.
10. HIRING OF RELATIVES BY PUBLIC OFFICIALS.
11. FORFEITURE OF OR DISQUALIFICATION FROM PUBLIC EMPLOYMENT ON CONVICTION OF AN OFFENSE RELATED TO PUBLIC EMPLOYMENT.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

25-16-101. [Repealed.]

25-16-103. Registration of certain agency officials as lobbyists.

Effective Dates. Acts 2003, No. 3, § 13: July 1, 2003. Emergency clause provided: "It is found and determined by the General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 2003 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of

the Regular Session, the delay in the effective date of this Act beyond July 1, 2003 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 2003."

25-16-101. [Repealed.]

Publisher's Notes. This section, concerning the salaries of executive department elected officials, was repealed by

Acts 2003, No. 3, § 11. The section was derived from Acts 1997, No. 1175 § 5.

25-16-103. Registration of certain agency officials as lobbyists.

An individual employed as an executive head of a state agency or as a chief deputy of an executive head of a state agency is not eligible to be registered as a lobbyist under § 21-8-601 et seq. until one (1) year after the expiration of the individual's employment in that capacity.

History. Acts 2013, No. 486, § 4.

SUBCHAPTER 2 — GOVERNOR**SECTION.**

25-16-201. Reorganization of agencies to meet federal program requirements.

SECTION.

25-16-203. Reports to Governor — Inclusion in message to General Assembly.

25-16-201. Reorganization of agencies to meet federal program requirements.

(a) In order to protect the state's participation in various federal programs and to continue to obtain the benefits of those programs for the people of this state or where necessary to obtain the benefits of new or expanded federal programs, the Governor is authorized, by executive order, to establish, combine, abolish, or otherwise reorganize any of the agencies, departments, divisions, sections, or units within the executive department of government where the changes or reorganizations are necessary to comply with the applicable federal law or regulations governing federal programs.

(b) However, whenever any executive order may move from the jurisdiction of any office, department, institution, or other agency any authority or jurisdiction of the agency in effect at the time of the order, the order shall be subject to confirmation by the General Assembly in the next following regular session, fiscal session, or special session, and the General Assembly by joint resolution may rescind the executive order.

History. Acts 1971, No. 139, § 1; A.S.A. 1947, § 12-311; Acts 2009, No. 962, § 45.

in (b), inserted "session, fiscal session" following "regular" and made a minor punctuation change.

Amendments. The 2009 amendment,

25-16-203. Reports to Governor — Inclusion in message to General Assembly.

The Auditor of State and Treasurer of State shall make their respective reports for each regular session to the Governor on or before October 10 next preceding the regular session of the General Assembly.

The Governor shall cause the reports to be printed with his or her biennial message and have them ready for the General Assembly on or before the Wednesday of the first week of the regular session of the General Assembly.

History. Acts 1853, § 1, p. 127; C. & M. Dig., § 4387; Pope's Dig., § 5399; A.S.A. 1947, § 12-302; Acts 2009, No. 962, § 46.

Amendments. The 2009 amendment, in the first sentence, substituted "each

regular session" for "each biennial session" and "the regular session" for "the regular meeting"; and inserted "regular" in the second sentence.

SUBCHAPTER 4 — SECRETARY OF STATE

25-16-403. Powers and duties generally.

A.C.R.C. Notes. Acts 2013, No. 1454, § 2, provided: "BROADBAND GRANTS RULES AND REGULATIONS AND PUBLIC NOTICE CALENDAR SAVINGS REPORT. The Secretary of State shall promulgate rules and regulations regarding the use of revenues collected and the disbursement of Broadband Enhancements Grants with prior review by the Adminis-

trative Rules and Regulations Subcommittee of the Arkansas Legislative Council or Joint Budget Committee. The Secretary of State shall report annually to the Arkansas Legislative Council or Joint Budget Committee estimated savings from the implementation of the State Internet Public Notice Calendar."

SUBCHAPTER 5 — AUDITOR OF STATE

SECTION.

25-16-508. [Repealed.]

25-16-512 — 25-16-514. [Repealed.]

25-16-508. [Repealed.]

Publisher's Notes. This section, concerning the printing of blanks for commissions for state officers and teacher licenses by the Auditor of State, was repealed by Acts 2013, No. 1276, § 3. The section was

derived from Acts 1915, No. 104, §§ 3, 4; C. & M. Dig., §§ 4450, 4451; Pope's Dig., §§ 5485, 5486; A.S.A. 1947, §§ 12-515, 12-516.

25-16-512 — 25-16-514. [Repealed.]

Publisher's Notes. These sections, concerning the examination of the books of the Auditor of State during a legislative session and the duty of the Auditor of State to provide a report to the Governor of revenue and funds available, were repealed by Acts 2013, No. 1276, §§ 4-6. The sections were derived from the following sources.

25-16-512. Rev. Stat., ch. 18, §§ 36-39; C. & M. Dig., §§ 4477-4480; Pope's Dig.,

§§ 5513-5516; A.S.A. 1947, §§ 12-533 — 12-536.

25-16-513. Rev. Stat., ch. 18, § 8; Acts 1853, § 1, p. 127; 1877, No. 29, § 1, p. 25; 1881, No. 97, § 1, p. 193; C. & M. Dig., §§ 4452-4454; Pope's Dig., §§ 5487-5489; A.S.A. 1947, §§ 12-302, 12-511 — 12-513; Acts 2009, No. 962, § 47.

25-16-514. Rev. Stat., ch. 18, § 41; C. & M. Dig., § 4455; Pope's Dig., § 5490; A.S.A. 1947, § 12-514.

SUBCHAPTER 6 — TREASURER OF STATE

SECTION.

25-16-604. Duties generally.

25-16-610. [Repealed.]

25-16-604. Duties generally.

It shall be the duty of the Treasurer of State:

(1) To receive and keep all the moneys of the state not expressly required by law to be kept by some other person;

(2) To disburse the public moneys upon warrants drawn upon the State Treasury according to law and not otherwise;

(3) To keep a just, true, and comprehensive account of all moneys received and disbursed by him or her in books to be kept for that purpose, in which he or she shall state from whom moneys have been received and on what account and to whom and on what account disbursed;

(4) To keep a just and true account of each head of appropriation made by law and the disbursements under them;

(5) To render his or her accounts to the Auditor of State for settlement quarterly;

(6) To report to the Governor on or before October 10 next preceding the meeting of the General Assembly for each session, a statement of the condition of the State Treasury and its operations for the preceding year. The report shall be made to the Governor; and

(7) To perform all other duties which may be required of him or her by law.

History. Rev. Stat., ch. 18, § 22; Acts 1853, § 1, p. 127; C. & M. Dig., §§ 4387, 4490; Pope's Dig., §§ 5399, 5526; A.S.A. 1947, §§ 12-302, 12-609; Acts 2009, No. 962, § 48.

Amendments. The 2009 amendment,

in (6), deleted "regular" preceding "meeting" and "biennial" preceding "session" and substituted "the preceding year" for "the two (2) preceding years" in the first sentence; and deleted "biennial" preceding "report" in the last sentence.

25-16-610. [Repealed.]

Publisher's Notes. This section, concerning the absence of a duty for the Treasurer of State to report railroad aid, levee bonds, or Holford bonds as part of the indebtedness of the state, was re-

pealed by Acts 2013, No. 1276, § 7. This section was derived from Acts 1881, No. 97, § 1, p. 193; C. & M. Dig., § 4453; Pope's Dig., § 5488; A.S.A. 1947, § 12-512.

SUBCHAPTER 7 — ATTORNEY GENERAL

SECTION.

25-16-705. Subpoena power — Attendance of witnesses.

25-16-713. Attorney General — Desig-

nated law enforcement agency.

Effective Dates. Acts 2009, No. 81, § 2: Feb. 2, 2009. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that in order to augment the law enforcement duties and abilities of the Attorney General’s office, facilitate the thorough investigation by the Attorney General’s office of all matters in which state interests are concerned, and enhance the Attorney General’s representation of the State of Arkansas in court and the Attorney General’s enforcement of the laws of the State of Arkansas, that this act

is immediately necessary for the continued successful operation of the Attorney General’s office. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

25-16-702. Representation of state agencies and officers generally — Employment of outside counsel.

CASE NOTES

ANALYSIS

Agency Representation.
—Agency Representation.

Agency Representation.

—Agency Representation.

Attorney general’s office did not have an irreconcilable conflict of interest in representing the Arkansas Board of Architects where it also represented the State Board of Registration for Professional Engineers

and Land Surveyors in disciplinary proceedings against engineers; the Attorney General was only representing the Board of Architects, not the Board of Engineering, and the latter board was in no way involved in this case. *Holloway v. Ark. State Bd. of Architects*, 352 Ark. 427, 101 S.W.3d 805 (2003).

Cited: *Holloway v. State Bd. of Architects*, 79 Ark. App. 200, 86 S.W.3d 391 (2002).

25-16-703. Representation of state interests in federal courts.

CASE NOTES

Cited: *Holloway v. State Bd. of Architects*, 79 Ark. App. 200, 86 S.W.3d 391 (2002).

25-16-705. Subpoena power — Attendance of witnesses.

(a) In all litigation, including criminal matters, in which the interests of the State of Arkansas are involved or may become involved before any tribunal, board, or commission, the Attorney General shall have the right to subpoena any person or the books, records, or other documents being held by any person. He or she shall have the authority to administer oaths for the purpose of taking testimony of witnesses subpoenaed before him or her, which he or she may deem necessary to adequately present the state’s case.

(b) The subpoena provided for in subsection (a) of this section shall be substantially in the following form:

“The State of Arkansas to the Sheriff of County: You are commanded to subpoena to attend before the Attorney General at on, 20....., at o'clockM., and testify and/or produce the following books, records, or other documents, to wit:
.....
in the matter of an investigation being conducted by the Attorney General in which the interests of the State of Arkansas are involved.
WITNESS my hand this day of, 20.....
Attorney General

By:
Assistant Attorney General”

(c) The subpoena provided for in subsection (a) of this section shall be served in the manner provided by law and returned and a record made and kept by the Attorney General. The fees and mileage of officers serving the subpoena, and of witnesses in answer to the subpoena, shall be as provided by law.

(d)(1) The failure of any officer to serve such subpoena, and the failure of a witness to appear on the return date thereof, shall constitute a misdemeanor punishable by a fine of not less than twenty-five dollars (\$25.00) nor more than one hundred dollars (\$100), by imprisonment in the county jail not to exceed six (6) months, or both fine and imprisonment.

(2) In addition to paying the penalty provided in subdivision (d)(1) of this section, any witness who fails to attend before the Attorney General at the time and place designated in the subpoena, or who refuses to testify or give evidence when he or she does attend, shall be cited on affidavit by the Attorney General to the Pulaski County Circuit Court or any other circuit court of the state where the subpoena was served and proceeded against. Such failure or refusal shall be punished by the court as if the witness had been subpoenaed to appear before the circuit court citing the person.

History. Acts 1957, No. 91, §§ 1-5; A.S.A. 1947, §§ 12-725 — 12-729; Acts 2011, No. 170, § 1.	Amendments. The 2011 amendment inserted “including criminal matters” in (a).
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25-16-706. Opinions.

CASE NOTES

Cited: Holloway v. State Bd. of Architects, 79 Ark. App. 200, 86 S.W.3d 391 (2002).

25-16-713. Attorney General — Designated law enforcement agency.

(a) The office of the Attorney General is designated as a law enforcement agency.

(b) A person designated and employed as a special investigator by the Attorney General shall:

- (1) Be a certified law enforcement officer under § 12-9-101 et seq.; and
- (2) Have statewide law enforcement jurisdiction and authority.

History. Acts 2009, No. 81, § 1.

SUBCHAPTER 9 — STATE BOARDS — COMPENSATION**SECTION.**

25-16-903. Stipend — Authorization for \$60.

25-16-904. Stipend — Authorization for \$85.

SECTION.

25-16-905. Stipend — Authorization for \$110.

Effective Dates. Acts 2009, No. 261, § 8: July 1, 2009: Emergency clause provided: "It is found and determined by the General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a one (1) year period; that the effectiveness of this Act on July 1, 2009 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of

the Regular Session, the delay in the effective date of this Act beyond July 1, 2009 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 2009."

25-16-903. Stipend — Authorization for \$60.

Each of the following state boards, by a majority vote of the total membership of the board cast during its first regularly scheduled meeting of each calendar year, may authorize payment to its members of a stipend not to exceed sixty dollars (\$60.00) per day for each meeting, examination, evaluation, or inspection attended or for any day while performing any proper business of the board, and the board members shall receive no other compensation, expense reimbursement, or in-lieu-of payments except as provided in § 25-16-902:

- (1) [Repealed.];
- (2) Arkansas State Board of Acupuncture and Related Techniques;
- (3) Arkansas Alcohol and Drug Abuse Coordinating Council;
- (4) Alcoholic Beverage Control Board;
- (5) Athletics and Activities Board;
- (6) Arkansas Appraiser Licensing and Certification Board;

- (7) Arkansas State Board of Architects, Landscape Architects, and Interior Designers;
- (8) Black History Commission of Arkansas;
- (9) Arkansas History Commission;
- (10) State Board of Barber Examiners;
- (11) Boiler Advisory Board;
- (12) Burial Association Board;
- (13) Capitol Zoning District Commission;
- (14) Arkansas Cemetery Board;
- (15) Arkansas Child Abuse/Rape/Domestic Violence Commission;
- (16) Contractors Licensing Board;
- (17) Cosmetology Technical Advisory Committee;
- (18) State Crime Laboratory Board;
- (19) Board of Developmental Disabilities Services;
- (20) Arkansas Educational Television Commission;
- (21) Board of Electrical Examiners of the State of Arkansas;
- (22) State Board of Election Commissioners;
- (23) Emergency Medical Services Advisory Council;
- (24) State Employment Security Advisory Council;
- (25) State Board of Licensure for Professional Engineers and Professional Surveyors;
- (26) State Library Board;
- (27) Arkansas Fire Protection Licensing Board;
- (28) Arkansas Fire and Police Pension Review Board;
- (29) Arkansas State Board of Registration for Foresters;
- (30) HVACR Licensing Board;
- (31) Liquefied Petroleum Gas Board;
- (32) Arkansas Livestock and Poultry Commission;
- (33) Marriage and Family Therapy Licensure Board;
- (34) Arkansas State Board of Massage Therapy;
- (35) Mississippi River Parkway Commission of Arkansas;
- (36) Arkansas Motor Vehicle Commission;
- (37) Arkansas Natural Heritage Commission;
- (38) [Repealed.];
- (39) Arkansas State Occupational Therapy Examining Committee;
- (40) State Apprenticeship Committee;
- (41) Arkansas State Board of Physical Therapy;
- (42) Arkansas Board of Dispensing Opticians;
- (43) Advisory Committee on Petroleum Storage Tanks;
- (44) [Repealed];
- (45) Arkansas Real Estate Commission;
- (46) State Marketing Board for Recyclables;
- (47) Board of Review;
- (48) Arkansas Rural Medical Practice Student Loan and Scholarship Board;
- (49) Arkansas Geological Survey;
- (50) Advisory Board to the Division of Land Surveys;
- (51) Licensing Committee for Operators of Solid Waste Management Facilities for the Arkansas Pollution Control and Ecology Commission;

- (52) State and Public School Life and Health Insurance Board;
- (53) Department of Human Services State Institutional System Board;
- (54) Arkansas State Police Commission;
- (55) Arkansas Building Authority Council;
- (56) Arkansas Towing and Recovery Board;
- (57) Arkansas Veterans' Commission;
- (58) Veterinary Medical Examining Board;
- (59) Commission on Water Well Construction;
- (60) Arkansas Waterways Commission;
- (61) Committee of Plumbing Examiners;
- (62) Arkansas Waste Water Treatment Plant Operators' Licensing Committee;
- (63) State Board of Collection Agencies;
- (64) Elevator Safety Board;
- (65) State Apprenticeship Coordination Steering Committee;
- (66) Arkansas Board of Hearing Instrument Dispensers;
- (67) Arkansas Tobacco Control Board;
- (68) Arkansas State Board of Athletic Training;
- (69) State Athletic Commission;
- (70) Daisy Gatson Bates Holiday Committee;
- (71) Amusement Ride Safety Advisory Board; and
- (72) Arkansas Natural and Cultural Heritage Advisory Committee.

History. Acts 1995, No. 1211, § 3; 1997, No. 250, § 239; 1997, No. 377, § 1; 1997, No. 693, § 1; 1997, No. 697, § 1; 1997, No. 966, § 13; 1997, No. 1018, § 4; 1999, No. 1235, § 1; 1999, No. 1286, § 3; 1999, No. 1553, § 19; 1999, No. 1591, § 5; 2001, No. 1650, § 1; 2003, No. 1300, § 2; 2007, No. 67, § 1; 2007, No. 186, § 11; 2007, No. 1583, § 3; 2009, No. 4, § 27; 2009, No. 404 § 1; 2009, No. 746, § 1; 2011, No. 786, § 1; 2011, No. 896, § 4; 2013, No. 89, § 1.

by No. 4 substituted "Cosmetology Technical Advisory Committee" for "State Board of Cosmetology" in (17).
 The 2009 amendment by No. 404 inserted (71).
 The 2009 amendment by No. 746 deleted (38).
 The 2011 amendment by No. 786 deleted (44).
 The 2011 amendment by No. 896 added (72).

Amendments. The 2009 amendment The 2013 amendment repealed (1).

25-16-904. Stipend — Authorization for \$85.

Each of the following state boards, by a majority vote of the total membership of the board cast during its first regularly scheduled meeting of each calendar year, may authorize payment to its members of a stipend not to exceed eighty-five dollars (\$85.00) per day for each meeting, examination, evaluation, or inspection attended or for any day while performing any proper business of the board, and the board members shall receive no other compensation, expense reimbursement, or in-lieu-of payments except as provided in § 25-16-902:

- (1) Auctioneer's Licensing Board;
- (2) Arkansas Economic Development Commission;
- (3) Supervisory Board for the Arkansas Crime Information Center;

- (4) Board of Corrections;
- (5) State Board of Education;
- (6) State Board of Embalmers and Funeral Directors;
- (7) State Board of Health;
- (8) Arkansas Health Policy Council;
- (9) State Parks, Recreation, and Travel Commission;
- (10) Arkansas Pollution Control and Ecology Commission;
- (11) Parole Board;
- (12) Arkansas Racing Commission;
- (13) Arkansas Sentencing Commission;
- (14) State Board of Career Education;
- (15) Oil and Gas Commission;
- (16) Professional Bail Bond Company and Professional Bail Bondsman Licensing Board;
- (17) Arkansas Natural Resources Commission;
- (18) Red River Commission;
- (19) Board of Trustees for the Arkansas School for the Blind and the Arkansas School for the Deaf;
- (20) Board of Directors of the Arkansas Development Finance Authority;
- (21) The Final Act Board of Directors;
- (22) The Arkansas Social Work Licensing Board; and
- (23) Board of Directors of the Arkansas Student Loan Authority.

History. Acts 1995, No. 1211, § 4; 1997, No. 540, § 51; 1997, No. 693, § 2; 1999, No. 1053, § 1; 1999, No. 1286, § 1; 2001, No. 726, § 1; 2001, No. 1650, § 2; 2001, No. 1803, § 6; 2007, No. 67, § 2; 2009, No. 261, § 5; 2011, No. 521, § 27; 2011, No. 808, § 1.

Amendments. The 2009 amendment added (24) and made related changes.

The 2011 amendment by No. 521 added (25)[23].

The 2011 amendment by No. 808 deleted (3) and (11) and redesignated the remaining subdivisions accordingly.

25-16-905. Stipend — Authorization for \$110.

Each of the following state boards, by a majority vote of the total membership of the board cast during its first regularly scheduled meeting of each calendar year, may authorize payment to its members of a stipend not to exceed one hundred ten dollars (\$110) per day for each meeting, examination, evaluation, or inspection attended or for any day while performing any proper business of the board, and the board members shall not receive any other compensation, expense reimbursement, or in-lieu-of payments except as provided in § 25-16-902:

- (1) Arkansas State Board of Dental Examiners;
- (2) Arkansas State Medical Board;
- (3) State Board of Optometry;
- (4) Sex Offender Assessment Committee;
- (5) Arkansas State Board of Chiropractic Examiners;
- (6) Arkansas State Board of Nursing;
- (7) Arkansas State Board of Pharmacy;

- (8) Arkansas Board of Podiatric Medicine; and
- (9) Arkansas State Board of Public Accountancy.

History. Acts 1995, No. 1211, § 5; 1999, No. 492, § 1; 1999, No. 1053, § 2; 1999, No. 1353, § 16; 1999, No. 1553, § 18; 2001, No. 1601, § 10; 2001, No. 1650, § 3; 2007, No. 67, § 3; 2009, No. 746, § 2; 2009, No. 1484, § 10; 2011, No. 786, § 2; 2011, No. 808, § 2; 2013, No. 89, § 2.

A.C.R.C. Notes. The Arkansas Community Assistance Commission referred to in this section does not exist.

Amendments. The 2009 amendment by No. 746 substituted "Offender" for "Of-

fenders" in (4), added (8), and made related changes.

The 2009 amendment by No. 1484 deleted (6) and redesignated the subsequent subdivision accordingly, and made a related change.

The 2011 amendment by No. 786 added (8).

The 2011 amendment by No. 808 deleted former (6), redesignated former (7) as present (6), and added present (7).

The 2013 amendment added (9).

SUBCHAPTER 10 — HIRING OF RELATIVES BY PUBLIC OFFICIALS

SECTION.

25-16-1001. Definitions.

25-16-1002. Prohibited employment of relatives.

25-16-1003. Married state agency employees.

SECTION.

25-16-1004. Criminal penalty.

25-16-1005. Civil penalties.

25-16-1006. Administration and enforcement.

25-16-1007. Applicability.

25-16-1001. Definitions.

As used in this subchapter:

(1) "Employee" means a person whose employment is not seasonal or temporary and whose actual performance of duty requires one thousand (1,000) or more hours during a fiscal year;

(2) "Public official" means:

(A) The Secretary of State, Governor, Lieutenant Governor, Treasurer of State, Auditor of State, Attorney General, Commissioner of State Lands, a member of the Senate, or a member of the House of Representatives; and

(B) The executive head of any agency, department, board, commission, institution, bureau, or council of this state;

(3) "Relative" means a husband, wife, mother, father, stepmother, stepfather, mother-in-law, father-in-law, brother, sister, stepbrother, stepsister, half-brother, half-sister, brother-in-law, sister-in-law, daughter, son, stepdaughter, stepson, daughter-in-law, son-in-law, uncle, aunt, first cousin, nephew, or niece;

(4) "State agency" means:

(A) All boards, commissions, departments, agencies, institutions, state-supported institutions of higher learning, and offices of constitutional officers of the State of Arkansas; and

(B) The General Assembly, including divisions, commissions, and bureaus operating under the authority of the General Assembly; and

(5) "Supervisory employee" means any individual having:

(A) Authority in the interest of the state agency to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees of a state agency; or

(B) The responsibility to direct other employees of a state agency, to adjust their grievances, or to effectively recommend an action if the exercise of authority is not of a merely routine or clerical nature but requires the use of independent judgment.

History. Acts 2005, No. 2262, § 1.

RESEARCH REFERENCES

Ark. L. Rev. Recent Development: Public Officials, 58 Ark. L. Rev. 471.

25-16-1002. Prohibited employment of relatives.

(a) A public official shall not appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement in or to a position in the state agency in which the official is serving or over which the official exercises jurisdiction or control, any person who:

(1) Is a relative of the public official; and

(2) Is an employee of a state agency or as a result of the public official's action would be an employee of a state agency.

(b) Within each state agency, no employees who are related shall be placed within the same direct line of supervision whereby one (1) relative is a supervisory employee and responsible for supervising the job performance or work activities of another relative.

(c) If a person is placed on the payroll of a state agency in violation of subsection (a) or subsection (b) of this section:

(1) The person shall not be entitled to pay at the rate for which the employee was initially hired;

(2) The person shall be entitled to receive pay at the greater of the minimum hourly wage rate under § 11-4-210 or the federal minimum hourly wage rate under the Fair Labor Standards Act, 29 U.S.C. § 201 et seq., for time actually worked while in violation of subsection (a) or subsection (b) of this section; and

(3) The employment shall be void.

History. Acts 2005, No. 2262, § 1.

25-16-1003. Married state agency employees.

(a) If as a result of a marriage that occurs after August 12, 2005, employees of a state agency are in violation of the prohibition established by § 25-16-1002, the violation shall be resolved by:

(1) Transferring one (1) of the employees to another position within the state agency;

(2) Transferring one (1) of the employees to another state agency; or

(3) The resignation of one (1) of the employees.

(b)(1) The public official of the state agency shall provide written notice to the employees of each of the alternatives under subsection (a) of this section available to eliminate the violation.

(2) The employees shall be given the opportunity to select among the available alternatives.

(3) If the employees are unable to agree upon an alternative within sixty (60) days of the notice required under subdivision (b)(1) of this section, then the public official shall take action to eliminate the violation.

History. Acts 2005, No. 2262, § 1.

25-16-1004. Criminal penalty.

(a) A person commits an offense if the person approves an account or draws or authorizes the drawing of a warrant or order to pay the compensation of another person employed in violation of § 25-16-1002.

(b) An offense under subsection (a) of this section is a Class A misdemeanor.

History. Acts 2005, No. 2262, § 1.

25-16-1005. Civil penalties.

(a) A public official who knowingly violates § 25-16-1002(a) shall be subject to a civil penalty of one thousand dollars (\$1,000).

(b)(1) The Attorney General may file suit in Pulaski County Circuit Court to collect the penalty.

(2) Penalties collected under this section shall be deposited to the General Revenue Fund Account of the State Apportionment Fund.

History. Acts 2005, No. 2262, § 1.

25-16-1006. Administration and enforcement.

(a) The Office of Personnel Management of the Division of Management Services of the Department of Finance and Administration shall establish rules and forms for all state agencies that will enable each public official and each supervisory employee within a state agency to determine whether:

(1) The hiring of a job applicant would violate § 25-16-1002 or § 25-16-1003; or

(2) The promotion or transfer of an employee of a state agency would violate § 25-16-1003.

(b) The office shall also establish rules concerning the procedures for:

(1) Reporting suspected violations of this subchapter to the office; and

(2)(A) Referring suspected violations to the Attorney General or the Prosecuting Attorney for the Sixth Judicial District for enforcing civil penalties under § 25-16-1005.

(B) If the Attorney General is suspected of violating this subchapter, the office shall refer the matter to the Pulaski County Prosecuting Attorney.

History. Acts 2005, No. 2262, § 1.

25-16-1007. Applicability.

This subchapter shall not apply to the hiring, transfer, or promotion of any person employed in a state agency as of August 12, 2005.

History. Acts 2005, No. 2262, § 1.

SUBCHAPTER 11 — FORFEITURE OF OR DISQUALIFICATION FROM PUBLIC EMPLOYMENT ON CONVICTION OF AN OFFENSE RELATED TO PUBLIC EMPLOYMENT

SECTION.

25-16-1101. Legislative intent.

25-16-1102. Definitions.

25-16-1103. Forfeiture of office.

25-16-1104. Disqualification from office.

SECTION.

25-16-1105. Enforcement.

25-16-1106. Applicability.

25-16-1107. Effect of expungement.

25-16-1101. Legislative intent.

(a) It is the policy of the State of Arkansas to promote integrity in public employment.

(b) It is the intent of this subchapter to require that a public servant who pleads guilty to or nolo contendere to or is found guilty of the following to forfeit his or her office, position, or employment, and thereafter he or she is disqualified from holding an office, position, or employment with a governmental body:

(1) A felony offense relating to his or her office, position, or employment;

(2) A misdemeanor offense involving fraud, dishonesty, bribery, forgery, or other form of corruption relating to his or her office, position, or employment; or

(3) Theft of property under § 5-36-103 when the victim of the theft is the governmental body with which the public servant is associated.

History. Acts 2009, No. 679, § 1; 2013, No. 995, § 1.

Amendments. The 2013 amendment substituted “the following” for “any felony

offense relating to his or her office, position, or employment” in (b); and added (b)(1) through (b)(3).

25-16-1102. Definitions.

As used in this subchapter:

(1) “Governmental body” means any office, department, commission, council, board, committee, legislative body, agency, or other establishment of the executive, judicial, or legislative branch of the state,

municipality, county, school district, institution of higher education, improvement district, or any political district or subdivision;

(2) “Offense” means conduct for which a sentence to a term of imprisonment or fine, or both, is authorized by statute;

(3)(A) “Public servant” means a public official, public employee, or public appointee.

(B) “Public servant” does not mean a member of the General Assembly or a person holding an office of trust or profit in the state under Arkansas Constitution, Article 5, § 9;

(4) “Relating to” means an offense that directly involves a person’s performance in the office, position, or employment held by a person in a governmental body; and

(5) “Public official” means a member of the General Assembly or person holding an office of trust or profit in the state under Arkansas Constitution, Article 5, § 9.

History. Acts 2009, No. 679, § 1; 2013, added the (3)(A) designation; and added No. 995, §§ 2, 3. (3)(B) and (5).

Amendments. The 2013 amendment

25-16-1103. Forfeiture of office.

(a) A public servant holding an office, position, or employment in a governmental body shall forfeit the office, position, or employment if he or she pleads guilty or nolo contendere to or is found guilty of:

(1) A felony offense relating to the public servant’s office, position, or employment;

(2) A misdemeanor offense involving fraud, dishonesty, bribery, forgery, or other form of corruption relating to the public servant’s office, position, or employment; or

(3) Theft of property under § 5-36-103 when the victim of the theft is the governmental body with which the public servant is associated.

(b)(1) A public official may be removed from office under Arkansas Constitution, Article 5.

(2) The General Assembly or the state may consider the following offenses when determining if a public official is qualified:

(A) A felony offense;

(B) Theft of property under § 5-36-103;

(C) Abuse of office under § 5-52-107; or

(D) Witness tampering under § 5-53-110.

(c) A public official or public servant may hold a public office after he or she is removed from an office, position, or employment with a governing body if an offense identified in subdivision (b)(2) of this section is expunged and permitted under applicable law.

History. Acts 2009, No. 679, § 1; 2013, in (a) deleted “Except as provided in subsection (b) of this section” and added (a)(1) No. 995, § 4. through (a)(3), rewrote (b), and added (c).

Amendments. The 2013 amendment

25-16-1104. Disqualification from office.

A public servant who pleads guilty or nolo contendere to or is found guilty of an offense under § 25-16-1103(a) shall be disqualified and barred from holding an office, position, or employment in a governmental body.

History. Acts 2009, No. 679, § 1; 2013, No. 995, § 5.

Amendments. The 2013 amendment substituted “public servant” for “person”

and substituted “an offense under § 25-16-1103(a)” for “a felony offense relating to his or her office, position, or employment in a governmental body.”

25-16-1105. Enforcement.

(a)(1) Forfeiture of an office, position, or employment may be raised at the time a public servant pleads guilty or nolo contendere to or is found guilty of an offense under § 25-16-1103(a).

(2)(A) If the issue of forfeiture is raised against a public servant, the circuit court shall order the public servant to pay a penalty.

(B) The circuit court shall determine the amount of the penalty under subdivision (a)(2)(A) of this section by considering the following:

- (i) The length of time over which the offense occurred;
- (ii) The amount of money the offense cost the governmental body;
- (iii) The amount of the public servant’s salary during the time period in which the offense occurred;
- (iv) The severity of the public servant’s breach of public trust; and
- (v) Any other information the court considers relevant.

(C) A penalty paid under subdivision (a)(2) of this section is in addition to an award to the state for restitution and the sentence of the public servant.

(3) If the issue of forfeiture is raised against a public servant, following sentencing a circuit court shall order forfeiture of an office, position, or employment upon a finding that § 25-16-1103 applies to the public servant.

(b)(1) If the issue of forfeiture is not raised under subsection (a) of this section, an action may be brought to remove the public servant in the manner provided by law to prevent usurpation of office under § 16-118-105.

(2)(A) If a public servant is removed under subdivision (b)(1) of this section, the circuit court shall order the public servant to pay a penalty to the state.

(B) The circuit court shall determine the amount of the penalty under subdivision (b)(2)(A) of this section by considering the factors under subdivision (a)(2)(B) of this section.

(C) A penalty paid under this subdivision (b)(2) of this section is in addition to an award to the state for restitution and the sentence of the public servant.

(c)(1) A public official who is removed from office under Arkansas Constitution, Article 5, § 9, may be ordered to pay a penalty if he or she

pleads guilty or nolo contendere to or is found guilty of one (1) of the following offenses:

- (A) A felony offense;
- (B) Theft of property under § 5-36-103;
- (C) Abuse of office under § 5-52-107; or
- (D) Witness tampering under § 5-53-110.

(2) The circuit court shall determine the amount of the penalty under subdivision (c)(1) of this section by considering the factors under subdivision (a)(2)(B) of this section.

(3) A penalty paid under subdivision (c)(1) of this section is in addition to an award to the state for restitution and the sentence of the public official.

(d) If a person holding an office, position, or employment in a governmental body is disqualified from the office, position, or employment under § 25-16-1104, an action may be brought to remove the person in the manner provided by law to prevent usurpation of office under § 16-118-105.

(e) This section does not prohibit a taxpayer from bringing a civil action under Arkansas Constitution, Article 16, § 13.

History. Acts 2009, No. 679, § 1; 2013, No. 995, § 6.

Amendments. The 2013 amendment substituted “an offense under § 25-16-1103(a)” for “a felony offense relating to his or her office, position, or employment

in a governmental body” in (a)(1); added (a)(2) and redesignated former (a)(2) as (a)(3); inserted the (b)(1) designation; added (b)(2) and (c) and redesignated the remaining subsections accordingly.

25-16-1106. Applicability.

(a) This subchapter shall apply to a public servant that, on or after July 31, 2009, pleads guilty or nolo contendere to or is found guilty of a felony offense relating to his or her office, position, or employment in any governmental body.

(b) This subchapter shall not supersede any provision of Arkansas law which provides forfeiture of or disqualification from service as a public servant for an offense other than a felony.

History. Acts 2009, No. 679, § 1.

25-16-1107. Effect of expungement.

An expunged record shall not serve as the basis for forfeiture of office or disqualification from office under this subchapter.

History. Acts 2009, No. 679, § 1.

CHAPTER 17

MANAGEMENT OF STATE INSTITUTIONS

SUBCHAPTER.

2. HONORARY BOARDS AND COMMISSIONS.
3. REGULATION OF PROPERTY.

SUBCHAPTER 2 — HONORARY BOARDS AND COMMISSIONS

SECTION.

25-17-204. Appointment and terms of members generally.

SECTION.

25-17-207. Oath of members.

25-17-204. Appointment and terms of members generally.

(a) By and with the advice and consent of the Senate, the Governor shall appoint the members of the boards.

(b) The term of office for each member shall commence January 15 and shall end on January 14 of the fifth or seventh year, as the number of years the full term may be, following the year in which the term commenced. The terms shall be arranged so that the term of one (1) member of each board shall expire each year.

(c)(1) Within twenty (20) days after the convening of the General Assembly in a regular session or a fiscal session, the Governor shall submit to the Senate for confirmation the names of those board members and appointees who are by law required to be confirmed by the Senate.

(2) However, the names of appointees to fill vacancies which occur after the first twenty (20) days of the session of the General Assembly, but prior to the adjournment thereof, shall be submitted within five (5) days from the date of each vacancy.

(3) In the event of rejection by the Senate of an appointee whose name has been so submitted, the Governor shall submit the name of another appointee to fill the vacancy within ten (10) days after receipt of written notice from the Secretary of the Senate of the rejection.

(4) In the event the Governor within the time herein required should fail to appoint or fail to submit to the Senate for confirmation the name of any appointee, then the office shall be vacant, and the Senate shall proceed to fill the vacancy by an appointee of its own choice.

(d) Any vacancies arising in the membership of the boards for any reason other than the expiration of the regular terms for which the members were appointed shall be filled by the appointment of the Governor, subject to the approval by a majority of the remaining members of the respective boards and shall be thereafter effective until the expiration of the regular terms.

(e) The Secretary of State shall furnish a certificate to each board member within ten (10) days following appointment, whereupon the appointee shall notify the Governor and the Secretary of State in writing of his or her acceptance of the appointment within thirty (30)

days. If the appointee shall fail to give notice of his or her acceptance within the time required, then the appointment shall be declared void and another appointment shall be made.

History. Acts 1943, No. 1, §§ 4, 6; 1947, No. 417, § 1; A.S.A. 1947, §§ 6-601, 7-203, 7-205; Acts 2009, No. 962, § 49.

Amendments. The 2009 amendment substituted “a regular session or fiscal session” for “regular session” in (c)(1).

Cross References. Governor’s appointments to boards and commissions need Senate confirmation, § 10-2-113.

25-17-207. Oath of members.

(a) Before entering upon his or her respective duties, each board member shall take, subscribe, and file in the office of the Secretary of State an oath that he or she will:

(1) Support the Constitution of the United States and the Constitution of the State of Arkansas;

(2) Faithfully perform the duties of the office upon which he or she is about to enter; and

(3) Not be or become directly or indirectly interested in any contract made by the board.

(b)(1) Any violation of the oath shall be a Class A misdemeanor.

(2) Any contract entered into in violation of the oath shall be void.

History. Acts 1943, No. 1, § 6; A.S.A. 1947, § 7-205; Acts 2005, No. 1994, § 365.

SUBCHAPTER 3 — REGULATION OF PROPERTY

SECTION.

25-17-301. Definitions.

25-17-304. Appointment and removal of institutional law enforcement officers.

25-17-305. Institutional law enforcement officer’s duties and powers.

SECTION.

25-17-306. Institutional law enforcement officers exempt from personal liability.

25-17-307. Rules and regulations for motor vehicles on institutional grounds.

Effective Dates. Acts 2005, No. 2162, § 2: Apr. 13, 2005. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that there is a question concerning rental fees and charges of public institutions of higher education for the management and control of the property of such institutions with respect to the parking of motor vehicles thereon; and that it is necessary to clarify by this act that any such fees or charges are paid as rental for parking spaces designated either generally or specifically for a permittee and not

as consideration for any service provided to the permit holder or person paying such fees and charges as rent. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

25-17-301. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Executive head", when used with reference to the University of Arkansas, means the President of the University of Arkansas System;

(2) "Institution" means the educational, charitable, correctional, penal, and other institutions owned and operated by the State of Arkansas and shall include the respective state parks of this state;

(3) "Property" means both real and personal property owned by or under the control of the institution and shall include all highways, streets, alleys, and rights-of-way that are contiguous or adjacent to property owned or controlled by the institution; and

(4) "Property under the control of" shall include that property upon which any registered institutional organization is maintained or property rented or leased for the purpose of facilitating events or functions of the institution.

History. Acts 1967, No. 328, § 1; 1971, 1947, §§ 7-112, 7-112.1; Acts 2007, No. 325, § 1; 1981, No. 805, §§ 1, 4; A.S.A. 498, § 1.

25-17-304. Appointment and removal of institutional law enforcement officers.

(a) The executive heads of each of the educational, charitable, correctional, penal, and other institutions owned and operated by the State of Arkansas, including the executive head of the Department of Parks and Tourism and the executive head of the Arkansas Forestry Commission, are authorized to designate and appoint one (1) or more of the employees of the institutions and department, respectively, as an institutional law enforcement officer or officers for the institution or at a state park, or any separate portion of the institution or park, who shall exercise law enforcement officer authority under the laws of this state.

(b) These institutional law enforcement officers shall:

(1) Have all the powers provided by law for city police and county sheriffs to be exercised as required for the protection of the respective state institutions and state parks, together with any other duties which may be assigned by the employing institution or department; and

(2) Meet the requirements for certification set out by the Executive Commission on Law Enforcement Standards in addition to any institution or department requirements.

(c)(1) The present jurisdictional powers or responsibility of the county sheriffs or city police over the land or property of institutions or persons on the land shall not be ceded to the law enforcement officers of state institutions.

(2) The appointment or designation of institutional law enforcement officers does not supersede in any way the authority of the Department of Arkansas State Police or the county sheriffs or that of the law enforcement officers of the jurisdiction within which the institution or portions of it are located.

(d)(1) Institutional law enforcement officers shall be identified by a shield or badge bearing the name of the state institution.

(2) The institution shall issue an identification card bearing the photograph of the institutional law enforcement officer who shall carry it on his or her person at all times when on duty and display it upon request.

(e)(1) An institutional law enforcement officer's authorization to have and to exercise the powers provided by law for law enforcement officers shall be further evidenced by a letter of appointment issued under the seal of the institution.

(2) The executive head of the institution and the executive head of the department or their designees shall maintain a file containing each institutional law enforcement officer's authorization certificate, the certificate of appointment, and all other certificates and information consistent with the regulations of the Executive Commission on Law Enforcement Standards.

(3)(A) The executive head of the state institution or the department shall have the authority to remove an employee from the execution of those designated duties, including the authority to revoke in writing the authorization to serve as an institutional law enforcement officer for the institution or department.

(B) Upon termination of that authority, the person shall no longer possess or exercise the authority of an institutional law enforcement officer.

(C) A copy of all revocations shall be placed in the file described in subdivision (e)(2) of this section.

(D) The Executive Commission on Law Enforcement Standards shall be notified of any change in an institutional law enforcement officer's status.

History. Acts 1967, No. 328, §§ 1, 8; 1971, No. 325, § 1; 1981, No. 805, § 1; A.S.A. 1947, §§ 7-112, 7-119; Acts 2007, No. 498, § 2; 2009, No. 549, § 4; 2009, No. 1198, § 1.

Amendments. The 2009 amendment

by No. 549 subdivided subsection (c) and made minor stylistic and punctuation changes.

The 2009 amendment by No. 1198 inserted "and the executive head of the Arkansas Forestry Commission" in (a).

25-17-305. Institutional law enforcement officer's duties and powers.

(a) An institutional law enforcement officer appointed under the authority of § 25-17-304, except to the extent otherwise limited by the executive head of the state institution or department appointing him or her, shall protect property, preserve and maintain proper order and decorum, prevent unlawful assemblies and disorderly conduct, exclude and eject persons detrimental to the well-being of the institution, prevent trespass, and regulate the operation and parking of motor vehicles upon and in all of the grounds, buildings, improvements, streets, alleys, and sidewalks under the control of the institution

employing him or her, which is the institutional law enforcement officer's primary jurisdiction.

(b)(1) An institutional law enforcement officer shall have and exercise police supervision on behalf of the institution and as a law enforcement officer may arrest any person upon or in the institutional law enforcement officer's primary jurisdiction who is committing an offense against any law of the State of Arkansas or against the ordinances of the city in which the institution is located and may deliver that person before any court of competent jurisdiction to be dealt with according to law.

(2) An institutional law enforcement officer may summon a posse comitatus if necessary.

(c) An institutional law enforcement officer may make an arrest for an offense against any law of the State of Arkansas outside his or her primary jurisdiction if the officer:

(1) Is summoned by another law enforcement agency to provide assistance;

(2) Is assisting another law enforcement agency;

(3)(A) Is traveling to or from any location in the state on official business.

(B) Official business includes, but is not limited to:

(i) Engaging in intelligence-gathering activity relating to security on the grounds, buildings, improvements, streets, alleys, and sidewalks under the control of the institution employing him or her;

(ii) Investigating a crime committed on the grounds, buildings, improvements, streets, alleys, and sidewalks under the control of the institution employing him or her;

(iii) Transporting money, valuables, securities, or other valuables on behalf of the institution;

(iv) Providing security or protective services for officials or visiting dignitaries to the institution; or

(v) The continuous and immediate pursuit of a person for an offense committed on the grounds, buildings, improvements, streets, alleys, and sidewalks under the control of the institution employing him or her, or in the officer's view.

(d)(1) When an arrest is made outside the institutional law enforcement officer's primary jurisdiction, the law enforcement agency with jurisdiction will be notified promptly and a written report forwarded to the agency no later than the next working day.

(2) The agency having jurisdiction may choose to take over the investigation or allow the institution or department law enforcement officer to bring the person before a court of competent jurisdiction to be dealt with according to law.

History. Acts 1967, No. 328, § 2; 1981, No. 805, § 2; A.S.A. 1947, § 7-113; Acts 2007, No. 498, § 3; 2009, No. 549, § 5.

Amendments. The 2009 amendment

substituted "An institutional law enforcement officer" for "He or she" in (b)(1) and (b)(2), and made minor stylistic changes.

25-17-306. Institutional law enforcement officers exempt from personal liability.

Any institutional law enforcement officers so appointed and designated and any other institutional employees so authorized executing the duties delegated to them under this subchapter shall not be personally liable for injuries to persons or for damages to property dealt with while acting within the scope of their authorized authority on behalf of the State of Arkansas and its institutions.

History. Acts 1967, No. 328, § 9; A.S.A. 1947, § 7-120; Acts 2007, No. 498, § 4.

25-17-307. Rules and regulations for motor vehicles on institutional grounds.

(a) Each of the institutions described in § 25-17-301 is authorized to promulgate rules and regulations and to amend or change them from time to time as its governing board shall deem necessary, providing for the operation and parking of motor vehicles upon the grounds, streets, drives, and alleys under its control, including, but not limited to, the following regulations:

(1) Limiting the rate of speed;

(2)(A) Assigning parking spaces and designating parking areas and their uses and collecting charges or fees as rent for those spaces.

(B) The charges or fees collected under subdivision (a)(2)(A) of this section, other than fees for parking or parking passes for athletic events or other special events, shall not be considered as payment for the providing of any service of any nature to the person paying the charges or fees as rent and shall be exempt for the tax levied by § 26-52-301(3);

(3) Prohibiting parking as it deems necessary;

(4) Removing vehicles parked in violation of institutional rules and regulations or city ordinances, at the expense of the violator, who shall pay the expense before the vehicle is released;

(5) Instituting a system of motor vehicle registration for the identification and regulation of vehicles regularly using institutional premises, including a reasonable charge to defray the cost thereof; and

(6)(A) Collecting under an established system administrative charges for violations of institutional rules and regulations governing motor vehicles, their operation, and parking.

(B) However, an administrative finding of violation may be appealed to the appropriate district court where the matter shall be heard de novo.

(b) Rules and regulations, together with any amendments thereto, which may from time to time be adopted by a state institution for the regulation of operation and parking of motor vehicles shall be recorded in the official minutes of the governing board having supervision of the institution, shall be filed with the Secretary of State, and shall be

printed, with copies available at convenient locations at the institution or at any separate portion thereof.

(c) Speed limits shall be posted at reasonable intervals, and traffic and parking directions and prohibitions shall be indicated by signs.

(d) From and after the promulgation of the rules and regulations, it shall be unlawful for any person to operate or to park a motor vehicle in violation thereof. Any person violating or refusing to comply with the rules and regulations if not otherwise provided for by city ordinance shall be subjected to a reasonable administrative charge stated in the promulgated rules and regulations.

(e)(1) Persons violating institutional rules and regulations promulgated under this section while using a motor vehicle registered with the institution at the option of the institutional law enforcement officer shall be charged under the institution's system of charges or summoned to appear before any court of competent jurisdiction, to be dealt with according to law. A person adversely affected by any administrative determination as described shall have a right to appeal therefrom to the appropriate district court where the matter shall be heard de novo.

(2) Persons violating institutional rules and regulations under this section while using a motor vehicle not registered with the institution or persons violating city ordinances shall be summoned to appear before the court. Notice placed on the vehicle shall be sufficient as a summons for the purposes of this section.

History. Acts 1967, No. 328, §§ 4, 5;
A.S.A. 1947, §§ 7-115, 7-116; Acts 2005,
No. 2162, § 1; 2007, No. 498, § 5.

CHAPTER 18

PUBLIC RECORDS

SUBCHAPTER.

2. STATE PUBLICATIONS.
4. SETTLEMENT AGREEMENTS.
6. RETENTION OF PUBLIC RECORDS BY STATE AGENCIES.
7. ELECTRONIC RECORDS AND SIGNATURES.

SUBCHAPTER 1 — GENERAL PROVISIONS

25-18-101. Reproduction of records generally.

RESEARCH REFERENCES

ALR. Disclosure of Electronic Data under State Public Records and Freedom of Information Acts. 54 A.L.R.6th 653.

SUBCHAPTER 2 — STATE PUBLICATIONS

SECTION.

25-18-206. Digests, acts, and journals — Distribution.

25-18-210 — 25-18-213. [Repealed.]

25-18-214. Clerks — Personal liability.

25-18-215 — 25-18-217. [Repealed.]

25-18-218. Supreme Court and Court of

SECTION.

Appeals reports — Medium of publication — Distribution.

25-18-220, 25-18-221. [Repealed.]

25-18-223. Book report of Secretary of State.

25-18-206. Digests, acts, and journals — Distribution.

(a) It shall be the Secretary of State's duty to distribute the acts and journals and all laws as are by law required to be distributed among the different counties of this state.

(b) The Secretary of State shall issue his or her requisition for the acts in whatever quantities are necessary to make the distribution required by law.

(c)(1) The Secretary of State shall reserve from sale copies of the acts of the General Assembly for free distribution of one (1) copy of each, as they are published and bound, to the following officers, only upon written request therefor within thirty (30) days following the date of adjournment sine die of any legislative session:

- (A) County judges;
- (B) County clerks;
- (C) Prosecuting attorneys;
- (D) District judges;
- (E) Circuit judges;
- (F) The Supreme Court Reporter;
- (G) Supreme Court Justices;
- (H) Court of Appeals Judges;
- (I) The Supreme Court Librarian;
- (J) The Attorney General;
- (K) Each state department;
- (L) Circuit clerks;
- (M) Sheriffs;
- (N) Tax collectors;
- (O) County treasurers;
- (P) Assessors; and
- (Q) Members of the General Assembly.

(2) However, the Attorney General upon written request within the same time period shall be supplied with two (2) copies of each.

(d) Members of the General Assembly shall be entitled to one (1) copy of the journal of the preceding session and of the session of which they are members.

History. Acts 1849, § 2, p. 75; C. & M. Dig., § 4403; Acts 1921, No. 207, § 2; Pope's Dig., §§ 5418, 5434; Acts 1939, No. 162, § 1; 1951, No. 84, § 1; 1965, No. 405, § 1; 1973, No. 835, § 3; 1975, No. 831, § 3; A.S.A. 1947, §§ 14-415, 14-416, 14-416.1, 14-419; Acts 1995, No. 709, §§ 15, 16; 1995, No. 933, § 1; 1997, No. 976, §§ 16, 17; 2003, No. 1165, § 14[12]; 2003, No. 1185, § 266.

25-18-210 — 25-18-213. [Repealed.]

Publisher's Notes. These sections, concerning distribution of Supreme Court and Court of Appeals reports, additional set of Supreme Court and Court of Appeals reports for Supreme Court Justices and Court of Appeals Judges, duties of clerks, and annual check of county libraries and clerks' offices, were repealed by Acts 2009, No. 221, §§ 9-12. These sections were derived from the following sources:

25-18-210. Acts 1941, No. 413, §§ 1, 2; 1971, No. 322, § 1; 1975, No. 328, § 2; 1979, No. 223, § 1; A.S.A. 1947, §§ 14-

422, 14-423; Acts 1989, No. 488, § 1; 1989, No. 499, § 1; 1991, No. 549, § 1.

25-18-211. Acts 1917, No. 129, § 1, p. 683; 1989, No. 488, § 2; 1991, No. 549, § 2.

25-18-212. Acts 1941, No. 413, § 1; 1971, No. 322, § 1; 1975, No. 328, § 2; A.S.A. 1947, § 14-422; Acts 1991, No. 549, § 3.

25-18-213. Acts 1941, No. 413, § 1; 1971, No. 322, § 1; 1975, No. 328, § 2; A.S.A. 1947, § 14-422; Acts 1989, No. 488, § 3; 1991, No. 549, § 4.

25-18-214. Clerks — Personal liability.

(a) The clerk and his or her bondsmen shall be personally liable and responsible for the safekeeping of bound volumes of the reports.

(b) The volume shall not be loaned or removed except that the clerk, upon approval of the Director of the Department of Finance and Administration, may remove or otherwise dispose of bound volumes if the official reports are available in electronic or other readily accessible medium in each county in the State of Arkansas for the general use of the courts, county officials, and attorneys.

History. Acts 1941, No. 413, § 1; 1971, No. 322, § 1; 1975, No. 328, § 2; A.S.A. 1947, § 14-422; Acts 1991, No. 549, § 5; 2009, No. 221, § 13; 2011, No. 1122, § 3.

Amendments. The 2009 amendment rewrote the section heading; redesignated the section; inserted "bound volumes of" in

(a); rewrote (b); and made related changes.

The 2011 amendment substituted "The volume shall not be loaned or removed" for "No volume shall be loaned or removed" in (b).

25-18-215 — 25-18-217. [Repealed.]

Publisher's Notes. These sections, concerning replacement of destroyed volumes of Supreme Court and Court of Appeals reports, number of copies of Supreme Court and Court of Appeals reports reserved by the Administrative Office of the Courts, and expense of distribution was repealed by Acts 2009, No. 221, § 14-16. These sections were derived from the following sources:

25-18-215. Acts 1941, No. 413, § 4;

A.S.A. 1947, § 14-424; Acts 1989, No. 488, § 4; 1991, No. 549, § 6.

25-18-216. Acts 1868, No. 33, § 3, p. 110; 1873, No. 91, § 3, p. 225; C. & M. Dig., § 4417; Pope's Dig., § 5432; A.S.A. 1947, § 14-425; Acts 1989, No. 488, § 5; 1991, No. 549, § 7.

25-18-217. Acts 1853, § 3, p. 202; C. & M. Dig., § 4409; Pope's Dig., § 5424; A.S.A. 1947, § 14-426; Acts 1989, No. 488, § 6.

25-18-218. Supreme Court and Court of Appeals reports — Medium of publication — Distribution.

(a)(1) The reports of the Supreme Court and the Court of Appeals shall be published and distributed in such format and medium as the Supreme Court may direct.

(2) The medium shall be a permanent, secure, and unalterable record of the final, official decisions of the Supreme Court and the Court of Appeals.

(b)(1) The reports shall be made publicly available for viewing at no charge via the Internet or other medium that is readily accessible by the public.

(2) However, the Administrative Office of the Courts may establish:

(A) A system of subscription-based access to additional features; and

(B) Reasonable charges for the provision of reports on disc or other physical medium.

History. Acts 1925, No. 357, § 2; Pope's Dig., §§ 1616, 13329; Acts 1955, No. 429, § 3; 1975, No. 328, § 1; A.S.A. 1947, §§ 14-421, 14-421.1; Acts 1987, No. 644, § 1; 1989, No. 488, § 7; 1995, No. 549, § 1; 2009, No. 221, § 17.

Amendments. The 2009 amendment rewrote the section.

25-18-220, 25-18-221. [Repealed.]

Publisher's Notes. These sections, concerning exchange of books with federal, state, and foreign entities, and distribution of reports and proceedings of the General Assembly to the Law Library Association, Inc., Shelby County, Tennessee, was repealed by Acts 2009, No. 221, § 18 and 19. These sections were derived from the following sources:

25-18-220. Acts 1921, No. 207, § 3; 1937, No. 209, § 1; Pope's Dig., § 5435; A.S.A. 1947, § 14-427; Acts 1989, No. 488, § 8; 1991, No. 549, § 8.

25-18-221. Acts 1937, No. 97, § 2; Pope's Dig., § 5440; A.S.A. 1947, § 14-434; Acts 1989, No. 488, § 9.

25-18-223. Book report of Secretary of State.

(a)(1) The Secretary of State is directed to cause to be compiled, edited, and published a bound book report of the Secretary of State for the period ending December 31, 2008, and containing the same information and subject matter as the earlier biennial reports of the Secretary of State and other data, both historical and contemporary, that in the opinion of the Secretary of State would be of interest to all citizens of Arkansas.

(2) The book shall be printed under the proper contract for state printing.

(b) Upon receipt of the volumes of the historical bound book report, the Secretary of State shall distribute them in the following manner:

(1) One (1) copy to each member of the General Assembly;

(2) One (1) copy to each city, county, regional, public school, parochial school, and institution of higher learning library in the State of Arkansas;

- (3) One (1) copy to each state constitutional officer;
- (4) One (1) copy to each circuit judge, district judge, and prosecuting attorney; and
- (5) One (1) copy to:
 - (A) Each elected or appointive county official, including the county judge, county sheriff, county clerk, collector, circuit clerk, coroner, and surveyor; and
 - (B) Other local elected officials upon written request.

History. Acts 1985, No. 643, §§ 1, 2; A.S.A. 1947, § 12-406n; Acts 1987, No. 1063, § 2; 1997, No. 365, § 1; 2009, No. 192, § 1.

Amendments. The 2009 amendment substituted “2008” for “1997” in (a)(1); substituted “One (1) copy” for “Two (2) copies” in (b)(2), inserted “district judge” in (b)(4), redesignated and rewrote (b)(5), and deleted (b)(6); deleted (c); and made related changes.

SUBCHAPTER 3 — DEPOSITORIES

25-18-302. [Repealed.]

Publisher’s Notes. This section, concerning state publications, was repealed by Acts 1993, No. 1224, § 6. The section was derived from Acts 1947, No. 170, § 2; 1955, No. 379, § 1; A.S.A. 1947, § 14-429.

SUBCHAPTER 4 — SETTLEMENT AGREEMENTS

SECTION.
25-18-403. Penalty.

25-18-403. Penalty.

Any person who violates the provisions of this subchapter shall be guilty of a violation and punished by a fine not exceeding five hundred dollars (\$500).

History. Acts 1991, No. 781, § 3; 2005, No. 1994, § 159.

SUBCHAPTER 6 — RETENTION OF PUBLIC RECORDS BY STATE AGENCIES

SECTION.
25-18-601. Legislative intent.
25-18-602. Applicability.
25-18-603. Definitions.

SECTION.
25-18-604. Retention requirement.
25-18-605. Conflict with federal or state laws.

Effective Dates. Acts 2005, No. 918, § 3: Mar. 18, 2005. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that there is no general records retention law and that this act is immediately necessary to preserve public records that could be lost permanently without this act. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become

effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2007, No. 751, § 38: July 1, 2007. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act

dissolves and transfers the duties of the Executive Chief Information Officer, Chief Information Officer, and Office of Information Technology; and that dissolving the offices at the beginning of the state’s fiscal year will result in a more efficient transfer of responsibilities and funds. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2007.”

25-18-601. Legislative intent.

(a) The General Assembly finds that while the Freedom of Information Act of 1967, § 25-19-101 et seq., provides disclosure guarantees for public records, due to Acts 2001, No. 1252, there is no general requirement for agencies to preserve public records.

(b) Therefore, the State of Arkansas is in need of a general records retention law to preserve records that are commonly found in most state agencies for disclosure under the Freedom of Information Act of 1967, § 25-19-101 et seq., for historical purposes and for the efficient operation of state government.

History. Acts 2005, No. 918, § 1.

A.C.R.C. Notes. Acts 2001, No. 1252, referred to in this section, repealed § 13-

4-101 et seq. which concerned public records management and archives.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Arkansas’s Public Records Retention Program:

Finding the FOIA’S Absent Partner, 28 U. Ark. Little Rock L. Rev. 175.

25-18-602. Applicability.

(a) This subchapter shall not apply to city, county, or local governmental entities.

(b) This subchapter shall apply only to records created by each state agency after the date the state agency complies with the rules and guidelines promulgated under this subchapter.

History. Acts 2005, No. 918, § 1.

25-18-603. Definitions.

As used in this subchapter:

(1) “Public records” means the same as defined in § 25-19-103(5)(A); and

(2)(A) “State agencies” means all state departments, boards, and commissions.

(B) "State agencies" does not include:

- (i) The elected constitutional officers and their staffs;
- (ii) The General Assembly and its committees and staffs;
- (iii) The Supreme Court;
- (iv) The Court of Appeals;
- (v) The Administrative Office of the Courts; and
- (vi) Public institutions of higher education with respect to academic, research, health care, and existing information and technology applications and underlying support.

History. Acts 2005, No. 918, § 1; 2007, No. 751, § 20.

25-18-604. Retention requirement.

(a) The Department of Finance and Administration shall direct the development of rules and guidelines for the retention of public records commonly found in most state agencies.

(b)(1) The Department of Finance and Administration shall promulgate pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq., rules and guidelines governing the retention and management of public records commonly found in most state agencies, including, but not limited to, electronic records.

(2) The Arkansas General Records Retention Schedule, previously promulgated and adopted as Agency Policy 200.000 of the Office of Information Technology, shall be an official regulation of the Department of Finance and Administration subject to revision under subsection (d) of this section.

(c) Each state agency shall comply with the rules and guidelines promulgated under this subchapter by July 1, 2007.

(d) The Department of Finance and Administration shall make periodic updates to the rules governing the retention and management of public records commonly found in most state agencies pursuant to the provisions of the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

History. Acts 2005, No. 918, § 1; 2007, No. 751, § 21.

25-18-605. Conflict with federal or state laws.

(a) If any rule promulgated under this subchapter is found to conflict with current federal or state law for the retention of public records, the federal or state law shall override the rule promulgated under this subchapter.

(b) Rules promulgated under this subchapter shall not require the disclosure of public records otherwise exempt from disclosure by federal or state law.

History. Acts 2005, No. 918, § 1.

SUBCHAPTER 7 — ELECTRONIC RECORDS AND SIGNATURES**SECTION.**

25-18-701. Use of electronic records.

25-18-702. Standards and policies.

SECTION.

25-18-703. State agency standards and policies.

25-18-701. Use of electronic records.

All state agencies shall use or permit the use of electronic records and electronic signatures.

History. Acts 2007, No. 722, § 1.

A.C.R.C. Notes. Acts 2007, No. 722, § 2, provided:

“(a) Arkansas Code § 25-18-701 shall be implemented no later than June 30, 2009.

“(b) The initial standards and policies

governing the use, management, retention, privacy, and security of electronic signatures and electronic records of state agencies required in Arkansas Code § 25-18-702 shall be established by the Executive Chief Information Officer no later than June 30, 2008.”

25-18-702. Standards and policies.

(a)(1) The Director of the Department of Information Systems shall establish standards and policies governing the use, management, retention, privacy, and security of electronic records of state agencies.

(b) The standards and policies shall address:

(1) The manner and format in which the electronic records must be created, generated, sent, communicated, received, and stored and the systems established for those purposes;

(2) Differing levels of criteria from which state agencies may choose in implementing the most appropriate standard for a particular application;

(3) The use of electronic signatures, including without limitation the type of electronic signature required, the manner and format in which the electronic signature must be affixed to the electronic record, the identification of the author of an electronic record, and the verification or authentication of the signature of the author of an electronic record;

(4) Control processes and procedures as appropriate to ensure adequate preservation, disposition, integrity, security, confidentiality, and auditability of electronic records; and

(5) Any other required attributes for electronic records that are reasonably necessary under the circumstances.

(c) The Director of the Department of Information Systems shall make a monthly report to the Joint Committee on Advanced Communications and Information Technology regarding the status of the development of the standards and policies described in this section.

History. Acts 2007, No. 722, § 1.

A.C.R.C. Notes. Acts 2007, No. 722, § 2, provided:

“(a) Arkansas Code § 25-18-701 shall

be implemented no later than June 30, 2009.

“(b) The initial standards and policies governing the use, management, reten-

tion, privacy, and security of electronic signatures and electronic records of state agencies required in Arkansas Code § 25-

18-702 shall be established by the Executive Chief Information Officer no later than June 30, 2008.”

RESEARCH REFERENCES

ALR. Disclosure of Electronic Data under State Public Records and Freedom of Information Acts. 54 A.L.R.6th 653.

25-18-703. State agency standards and policies.

A state agency may use the standards and policies developed by the Director of the Department of Information Systems under § 25-18-702, or it may develop its own standards and policies consistent with the requirements established in § 25-18-702(b).

History. Acts 2007, No. 722, § 1.

CHAPTER 19

FREEDOM OF INFORMATION ACT OF 1967

SECTION.

25-19-103. Definitions.

25-19-104. Penalty.

25-19-105. Examination and copying of public records.

SECTION.

25-19-106. Open public meetings.

25-19-107. Appeal from denial of rights — Attorney’s fees.

25-19-110. Exemptions.

A.C.R.C. Notes.

Acts 2007, No. 726, § 2, provided: “This act expires on July 1, 2009.”

For exemption on public disclosure of certain records of emergency service agencies, see the A.C.R.C. Note at Title 12, Chapter 75, Subchapter 1.

Effective Dates. Acts 2003, No. 275, § 3: Feb. 28, 2003. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that for many years, veterans were advised to file their military service discharge records or DD Form 214 with the court recorder; that these forms contain sensitive information that can be used by identity thieves to obtain credit in the veteran’s name or otherwise defraud the veteran or his or her family; in recent years, the incident of identity theft has increased; that incidents of identity thieves using the military service discharge records or DD Form 214 to obtain credit in the veteran’s name or otherwise defraud the veteran or his or her family

has occurred; that the effects on the veteran and the veteran’s family are devastating; and that this act is immediately necessary to protect veterans and their families from identity theft by making military service discharge records or DD Form 214 filed with the county recorder confidential and not subject to the Arkansas Freedom of Information Act. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2003, No. 763, § 4: Mar. 27, 2003. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that safe and

secure water systems are vital to the health and well being of the citizens of this state; that information concerning the safety and security of public water systems subject to disclosure under the Arkansas Freedom of Information Act could be obtained for terroristic purposes, including contamination and destruction of public water systems; and that this act is immediately necessary to deter these acts, and to protect the security of public water systems. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2003, No. 1214, § 2: Apr. 10, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that certain records of law abiding citizens of this state need further protection from disclosure; that this act provides that protection; and that until this act goes into effect, the law abiding citizens of this state will remain in danger of information being disclosed which is contrary to their best interests. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2005, No. 259, § 4: July 1, 2005. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that provisions in the Freedom of Information Act concerning records and meetings of public water systems will expire on July 1, 2005; that the continued ability of the public to access records of public water systems is necessary in order to ensure that public water systems are operated and managed safely and effectively; and that this act is

immediately necessary in order to provide continuous access to the records. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2005."

Acts 2007, No. 268, § 4: Mar. 9, 2007. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that safe and secure public water systems are vital to the health and public well-being of the citizens of this state; that information pertaining to the vulnerability assessments presently subject to disclosure under the Arkansas Freedom of Information Act could be obtained for domestic or foreign terroristic purposes, including the contamination and destruction of public water systems; and that the threat of acts of terrorism against public water systems is legitimate and real. To deter such acts, and to protect the security of public water systems, the Arkansas Freedom of Information Act should be amended immediately to exempt vulnerability assessments created on or before June 30, 2004, from disclosure. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2007, No. 998, § 4: July 1, 2007. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that certain provisions in the Freedom of Information Act concerning the records and meetings of public water systems will expire on July 1, 2007; that those provisions are necessary to ensure that public water systems are operated and managed safely and effectively; and that this act is necessary in order to provide security for public water systems. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2007."

Acts 2009, No. 631, § 4: July 1, 2009. Emergency clause provided: "It is found

and determined by the General Assembly of the State of Arkansas that certain provisions in the Freedom of Information Act concerning the records and meetings of the public water systems will expire on July 1, 2009; that those provisions are necessary to ensure that public water systems are operated and managed safely and effectively; and that this act is necessary to provide security for public water systems. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2009."

Acts 2009, No. 1291, § 2: Apr. 9, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the identities of persons holding concealed weapons licenses should be private; that there are currently insufficient safeguards ensuring that privacy; and that this act is immediately necessary because persons holding concealed weapons licenses are currently at risk of having that privacy exploited. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2011, No. 99, § 4: July 1, 2011. Emergency clause provided: "It is found

and determined by the General Assembly of the State of Arkansas that certain provisions of the Freedom of Information Act of 1967 concerning the records and meetings of public water systems will expire on July 1, 2011; that those provisions are necessary to ensure that public water systems are operated and managed safely and effectively; and that this act is necessary to provide security for public water systems. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on and after July 1, 2011."

Acts 2013, No. 145, § 2: Feb. 22, 2013. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the release of records to the general public concerning persons licensed to carry a concealed handgun is an unwarranted invasion of privacy and threatens the safety and property of the persons identified; and that this act is immediately necessary to prevent harm to citizens and safeguard their property. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

CASE NOTES

Applicability.

Request for disclosure of a legal opinion under 006-05-009 Ark. Code R. § GR-75(B) is a request for public records under the Arkansas Freedom of Information Act,

§ 25-19-101 et seq., not an agency action subject to the Arkansas Administrative Procedure Act, § 25-15-201 et seq. *Ryan & Co. v. Weiss*, 371 Ark. 43, 263 S.W.3d 489 (2007).

25-19-101. Title.

Cross References. Purpose of Legislative Joint Auditing Committee, § 10-3-402.

RESEARCH REFERENCES

Ark. L. Rev. Article, The Arkansas Proposal on Access to Court Records: Upgrading the Common Law with Electronic Freedom of Information Norms, 59 Ark. L. Rev. 555.

U. Ark. Little Rock L. Rev. Annual Survey of Caselaw: Ethics and Profes-

sional Responsibility Law, 27 U. Ark. Little Rock L. Rev. 727.

Arkansas's Public Records Retention Program: Finding the FOIA's Absent Partner, 28 U. Ark. Little Rock L. Rev. 175.

CASE NOTES

ANALYSIS

Construction.
Appellate Review.
Fees And Costs.
Public Records.
Standing.

Construction.

Court liberally construes the Arkansas Freedom of Information Act, § 25-19-101 et seq., to accomplish its broad and laudable purpose that public business be performed in an open and public manner, and the court broadly construes the Act in favor of disclosure. *Fox v. Perroni*, 358 Ark. 251, 188 S.W.3d 881 (2004).

Appellate Review.

Circuit court denied appellant's complaint against a police department and its police chief for violation of the Freedom of Information Act (FOIA). Upon reviewing the FOIA request that appellant submitted, the appellate court concluded that the circuit court's finding that the police chief acted in good faith was not clearly erroneous. *Daugherty v. Sipes*, 2012 Ark. App. 233, — S.W.3d — (2012).

Fees And Costs.

Arkansas Department of Human Services was a department of the State of Arkansas and a suit against a state official in his official capacity was not a suit against that person but, rather, was a suit against that official's office, thus, even though the individual prevailed in obtaining certain public records under the Arkansas Freedom of Information Act, § 25-19-101 et seq., under § 25-19-107(d), no award of attorney's fees could be assessed against either the Department or the director, who was acting as a state official in his official capacity; further, as an individual, the director had no administrative

control of the public records as he would have had control of the public records only in his official capacity. *George v. Ark. Dep't of Human Servs.*, 88 Ark. App. 135, 195 S.W.3d 399 (2004).

Because an inmate cited no postconviction remedy available to the inmate and otherwise made no showing of compelling need, the inmate failed to show that transcripts of the inmate's trial and appeal should be provided pursuant to §§ 25-19-101 to 109 at no cost. *Cox v. State*, 2011 Ark. 96, — S.W.3d — (2011).

Public Records.

Litigation files prepared by an attorney hired by private medical malpractice liability insurance carriers to represent three doctors who worked for the state university were not subject to disclosure under the Freedom of Information Act, §§ 25-19-101 to 25-19-110, because the documents were not public records for purposes of subdivision (a)(1)(A) of this section. As the doctors were sued in their personal capacity, simply changing the records request to name the doctors in their official capacity did not convert the documents from private to public; the documents were also attorney work-product and subject to the attorney-client privilege. *Harrill & Sutter, PLLC v. Farrah*, 2012 Ark. 180, — S.W.3d — (2012).

Standing.

Reviewing court disagreed with the county contractor's assertion that she had standing to raise an Arkansas Freedom of Information Act issue since she had a personal stake in the outcome of the proceeding, because where the messages often contained both business matters and personal issues, the contractor waived any right of privacy she may have had. *Pulaski County v. Ark. Democrat-Gazette, Inc.*, 371 Ark. 217, 264 S.W.3d 465 (2007).

Cited: *Loveless v. Tucker*, 2009 Ark. 424, — S.W.3d — (2009); *Scott v. State*, 2009 Ark. 437, — S.W.3d — (2009).

25-19-102. Legislative intent.

RESEARCH REFERENCES

Ark. L. Rev. Recent Developments, Meetings Requirement, 57 Ark. L. Rev. Freedom of Information Act — Public 1015.

CASE NOTES

Construction.

After reviewing this section and §§ 25-19-105 and 25-19-106, the court found nothing in the Freedom of Information Act that specifies that the communications media by which the public's business is conducted are limited to publicly owned communications; thus, the court rejected a state employee's claim that the employee was asked to violate the law by communicating with the governor via a private email address and, thus, the employee's subsequent resignation was voluntary without good cause and the employee was not entitled to benefits under § 11-10-513(a)(1). *Bradford v. Dir., Empl.*

Sec. Dep't., 83 Ark. App. 332, 128 S.W.3d 20 (2003).

City administrator's succession of one-on-one conversations with each member of the city's board of directors violated the "open meetings" provision of the Freedom of Information Act, §§ 25-19-101 — 25-19-109; through its conversations the board held a meeting within the intent of the FOIA such that the city's actions resulted in a consensus being reached on a given issue, thus rendering the formal meeting held before the public a mere charade. *Harris v. City of Fort Smith*, 86 Ark. App. 20, 158 S.W.3d 733 (2004), *aff'd*, 359 Ark. 355, 197 S.W.3d 461 (2004).

25-19-103. Definitions.

As used in this chapter:

(1)(A) "Custodian", with respect to any public record, means the person having administrative control of that record.

(B) "Custodian" does not mean a person who holds public records solely for the purposes of storage, safekeeping, or data processing for others;

(2) "Format" means the organization, arrangement, and form of electronic information for use, viewing, or storage;

(3) "Medium" means the physical form or material on which records and information may be stored or represented and may include, but is not limited to, paper, microfilm, microform, computer disks and diskettes, optical disks, and magnetic tapes;

(4) "Public meetings" means the meetings of any bureau, commission, or agency of the state or any political subdivision of the state, including municipalities and counties, boards of education, and all other boards, bureaus, commissions, or organizations in the State of Arkansas, except grand juries, supported wholly or in part by public funds or expending public funds;

(5)(A) "Public records" means writings, recorded sounds, films, tapes, electronic or computer-based information, or data compilations in any medium required by law to be kept or otherwise kept and that

constitute a record of the performance or lack of performance of official functions that are or should be carried out by a public official or employee, a governmental agency, or any other agency or improvement district that is wholly or partially supported by public funds or expending public funds. All records maintained in public offices or by public employees within the scope of their employment shall be presumed to be public records.

(B) "Public records" does not mean software acquired by purchase, lease, or license;

(6) "Public water system" means all facilities composing a system for the collection, treatment, and delivery of drinking water to the general public, including but not limited to reservoirs, pipelines, reclamation facilities, processing facilities, and distribution facilities; and

(7) "Vulnerability assessment" means an assessment of the vulnerability of a public water system to a terrorist attack or other intentional acts intended to substantially disrupt the ability of the public water system to provide a safe and reliable supply of drinking water as required by the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, Pub. L. No. 107-188.

History. Acts 1967, No. 93, § 3; 1977, No. 652, § 1; 1981, No. 608, § 1; 1985, No. 468, § 1; A.S.A. 1947, § 12-2803; Acts 2001, No. 1653, § 1; 2003, No. 763, § 1; 2005, No. 259, § 1; 2007, No. 268, § 1; 2007, No. 998, § 1; 2009, No. 631, § 1; 2011, No. 99, § 1; 2011, No. 210, § 2; 2013, No. 235, § 1.

Amendments. The 2009 amendment substituted "July 1, 2011" for "July 1, 2009" in (6)(B) and made a minor stylistic change.

The 2011 amendment by No. 99 substituted "July 1, 2013" for "July 1, 2011" in (6)(B).

The 2011 amendment by No. 210 inserted "or improvement district that is" in (5)(A).

The 2013 amendment redesignated former (6)(A) as (6), and deleted (6)(B).

Cross References. Access to criminal history information, § 12-12-1508.

RESEARCH REFERENCES

Ark. L. Rev. Recent Developments, Meetings Requirement, 57 Ark. L. Rev. Freedom of Information Act — Public 1015.

CASE NOTES

ANALYSIS

Public Meetings.
Public Records.

Public Meetings.

Where city board members held one-on-one meetings discussing the potential purchase of property, the meetings violated § 25-19-106(a) of the Arkansas Freedom of Information Act, § 25-19-101 et seq., because the members had made up there minds before the public meeting and, thus, the meetings constituted board

meetings under subdivision (4) of this section. *Harris v. City of Fort Smith*, 359 Ark. 355, 197 S.W.3d 461 (2004).

Public Records.

Definition of "public record" in subdivision (5)(A) of this section does not require that the custodian be the person who actually keeps the document, nor does it say that the custodian must be required to keep the document. *Fox v. Perroni*, 358 Ark. 251, 188 S.W.3d 881 (2004).

Locus of a record is important only to determine whether the record falls under

the presumption in § 25-19-103(5)(A) of the Arkansas Freedom of Information Act, and the definition of “public record” is not dependent upon who keeps the record or where it is kept, just that it either is required to be kept or is otherwise kept. *Fox v. Perroni*, 358 Ark. 251, 188 S.W.3d 881 (2004).

Where the records in question are established as “public records” pursuant to subdivision (1) of this section and not otherwise exempted from disclosure, the appropriate governmental agency shall have the responsibility to provide reasonable access for examination and copying of such public records which are in existence at the time of the request, as provided in § 25-19-105. *Fox v. Perroni*, 358 Ark. 251, 188 S.W.3d 881 (2004).

Circuit judge’s law clerk’s personal check was a public record under this section, and the circuit judge was its custodian and had to disclose the check to an attorney and his counsel pursuant to § 25-19-105 where the circuit judge instructed his clerk to obtain copies of certain documents from a federal court for use in contempt proceedings against the attorney, and where the attorney and his

counsel sought disclosure of the check under FOIA. *Fox v. Perroni*, 358 Ark. 251, 188 S.W.3d 881 (2004).

Seed sample did not meet the definition of a “public record” because it could not be said to be an object on which records and information may be stored or represented; the list of items that could be mediums did not contain a seed or any other object, and removal and destructive testing of seed samples went far beyond the inspection and copying of public records. *Nolan v. Little*, 359 Ark. 161, 196 S.W.3d 1 (2004).

Legal opinions rendered in tax cases under 006-05-009 Ark. Code R. § GR-75(B) are subject to disclosure to a company because they are “otherwise kept” public records under subdivision (5)(A) of this section; however, any and all identifying facts and information have to be fully redacted under § 25-19-105(f)(1)–(3). Moreover, the legal opinions are not confidential because § 26-18-303(a)(1) does not cover 006-05-009 Ark. Code R. § GR-75(B); state law does not require that the opinions be kept by or filed with the Director of the Arkansas Department of Finance and Administration. *Ryan & Co. v. Weiss*, 371 Ark. 43, 263 S.W.3d 489 (2007).

25-19-104. Penalty.

Any person who negligently violates any of the provisions of this chapter shall be guilty of a Class C misdemeanor.

History. Acts 1967, No. 93, § 7; A.S.A. 1947, § 12-2807; Acts 1987, No. 49, § 3; 2005, No. 1994, § 413.

RESEARCH REFERENCES

ALR. Allowance of punitive damages in state freedom of information actions. 13 A.L.R.6th 721.

CASE NOTES

ANALYSIS

In General.
No Violation.

In General.

Circuit court’s determination that this section and § 25-19-106 were unconstitu-

tional was improper because declaratory relief was inappropriate under this section as appellees did not yet have a case or controversy ready for decision by the courts. Appellees received a legal opinion on the effects of certain provisions of the state’s Freedom of Information Act rather than resolution of an actual controversy.

McCutchen v. City of Fort Smith, 2012 Ark. 452, — S.W.3d —, 2012 Ark. LEXIS 485 (Dec. 6, 2012).

No Violation.

Appellees' actions of purging the records did not violate this section because the captain testified that it was police

department policy to purge the recordings every 45 days in order to maintain sufficient memory on the server and the driver did not produce any evidence to the contrary. Daugherty v. Jacksonville Police Dep't, 2012 Ark. 264, — S.W.3d — (2012).

25-19-105. Examination and copying of public records.

(a)(1)(A) Except as otherwise specifically provided by this section or by laws specifically enacted to provide otherwise, all public records shall be open to inspection and copying by any citizen of the State of Arkansas during the regular business hours of the custodian of the records.

(B) However, access to inspect and copy public records shall be denied to:

(i) A person who at the time of the request has pleaded guilty to or been found guilty of a felony and is incarcerated in a correctional facility; and

(ii) The representative of a person under subdivision (a)(1)(B)(i) of this section unless the representative is the person's attorney who is requesting information that is subject to disclosure under this section.

(2)(A) A citizen may make a request to the custodian to inspect, copy, or receive copies of public records.

(B) The request may be made in person, by telephone, by mail, by facsimile transmission, by electronic mail, or by other electronic means provided by the custodian.

(C) The request shall be sufficiently specific to enable the custodian to locate the records with reasonable effort.

(3) If the person to whom the request is directed is not the custodian of the records, the person shall so notify the requester and identify the custodian, if known to or readily ascertainable by the person.

(b) It is the specific intent of this section that the following shall not be deemed to be made open to the public under the provisions of this chapter:

(1) State income tax records;

(2) Medical records, adoption records, and education records as defined in the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g, unless their disclosure is consistent with the provisions of that act;

(3) The site files and records maintained by the Arkansas Historic Preservation Program of the Department of Arkansas Heritage and the Arkansas Archeological Survey;

(4) Grand jury minutes;

(5) Unpublished drafts of judicial or quasi-judicial opinions and decisions;

(6) Undisclosed investigations by law enforcement agencies of suspected criminal activity;

(7) Unpublished memoranda, working papers, and correspondence of the Governor, members of the General Assembly, Supreme Court Justices, Court of Appeals Judges, and the Attorney General;

(8) Documents that are protected from disclosure by order or rule of court;

(9)(A) Files that if disclosed would give advantage to competitors or bidders; and

(B)(i) Records maintained by the Arkansas Economic Development Commission related to any business entity's planning, site location, expansion, operations, or product development and marketing, unless approval for release of those records is granted by the business entity.

(ii) However, this exemption shall not be applicable to any records of expenditures or grants made or administered by the commission and otherwise disclosable under the provisions of this chapter;

(10)(A) The identities of law enforcement officers currently working undercover with their agencies and identified in the Arkansas Minimum Standards Office as undercover officers.

(B) Records of the number of undercover officers and agency lists are not exempt from this chapter;

(11) Records containing measures, procedures, instructions, or related data used to cause a computer or a computer system or network, including telecommunication networks or applications thereon, to perform security functions, including, but not limited to, passwords, personal identification numbers, transaction authorization mechanisms, and other means of preventing access to computers, computer systems or networks, or any data residing therein;

(12) Personnel records to the extent that disclosure would constitute a clearly unwarranted invasion of personal privacy;

(13) Personal contact information, including without limitation home or mobile telephone numbers, personal email addresses, and home addresses of nonelected state employees, nonelected municipal employees, nonelected school employees, and nonelected county employees contained in employer records, except that the custodian of the records shall verify an employee's city or county of residence or address on record upon request;

(14) Materials, information, examinations, and answers to examinations utilized by boards and commissions for purposes of testing applicants for licensure by state boards or commissions;

(15) Military service discharge records or DD Form 214, the Certificate of Release or Discharge from Active Duty of the United States Department of Defense, filed with the county recorder as provided under § 14-2-102, for veterans discharged from service less than seventy (70) years from the current date;

(16) Vulnerability assessments submitted by a public water system on or before June 30, 2004, to the Administrator of the United States Environmental Protection Agency for a period of ten (10) years from the date of submission;

(17)(A) Records, including analyses, investigations, studies, reports, or recommendations, containing information relating to any Department of Human Services risk or security assessment, known or suspected security vulnerability, or safeguard related to compliance with the Health Insurance Portability and Accountability Act of 1996 or protection of other confidential department information.

(B) The records shall include:

- (i) Risk and security assessments;
- (ii) Plans and proposals for preventing and mitigating privacy and security risks;
- (iii) Emergency response and recovery records;
- (iv) Privacy and security plans and procedures; and
- (v) Any other records containing information that if disclosed might jeopardize or compromise efforts to secure and protect personal health information or other protected department information.

(C) This subdivision (b)(17) expires on July 1, 2009;

(18)(A) Records, including analyses, investigations, studies, reports, recommendations, requests for proposals, drawings, diagrams, blueprints, and plans containing information relating to security for any public water system.

(B) The records under subdivision (b)(18)(A) include:

- (i) Risk and vulnerability assessments;
- (ii) Plans and proposals for preventing and mitigating security risks;
- (iii) Emergency response and recovery records;
- (iv) Security plans and procedures; and
- (v) Other records containing information that if disclosed might jeopardize or compromise efforts to secure and protect the public water system; and

(19) Records pertaining to the issuance, renewal, expiration, suspension, or revocation of a license to carry a concealed handgun, or a present or past licensee under § 5-73-301 et seq., including without limitation all records provided to or obtained by a local, state, or federal government or their officials, agents, or employees in the investigation of an applicant, licensee, or past licensee, and all records pertaining to a criminal or health history check conducted on the applicant, licensee, or past licensee except that:

(A) Information or other records regarding an applicant, licensee, or past licensee may be released to a law enforcement agency to assist in a criminal investigation or prosecution or to determine the validity of or eligibility for a license; and

(B) The name of an applicant, licensee, or past licensee may be released as contained in investigative or arrest reports of law enforcement that are subject to release as public records.

(c)(1) Notwithstanding subdivision (b)(12) of this section, all employee evaluation or job performance records, including preliminary notes and other materials, shall be open to public inspection only upon final administrative resolution of any suspension or termination pro-

ceeding at which the records form a basis for the decision to suspend or terminate the employee and if there is a compelling public interest in their disclosure.

(2) Any personnel or evaluation records exempt from disclosure under this chapter shall nonetheless be made available to the person about whom the records are maintained or to that person's designated representative.

(3)(A) Upon receiving a request for the examination or copying of personnel or evaluation records, the custodian of the records shall determine within twenty-four (24) hours of the receipt of the request whether the records are exempt from disclosure and make efforts to the fullest extent possible to notify the person making the request and the subject of the records of that decision.

(B)(i) If the subject of the records cannot be contacted in person or by telephone within the twenty-four-hour period, the custodian shall send written notice via overnight mail to the subject of the records at his or her last known address. Either the custodian, requester, or the subject of the records may immediately seek an opinion from the Attorney General, who, within three (3) working days of receipt of the request, shall issue an opinion stating whether the decision is consistent with this chapter.

(ii) In the event of a review by the Attorney General, the custodian shall not disclose the records until the Attorney General has issued his or her opinion.

(C) However, nothing in this subsection shall be construed to prevent the requester or the subject of the records from seeking judicial review of the custodian's decision or the decision of the Attorney General.

(d)(1) Reasonable access to public records and reasonable comforts and facilities for the full exercise of the right to inspect and copy those records shall not be denied to any citizen.

(2)(A) Upon request and payment of a fee as provided in subdivision (d)(3) of this section, the custodian shall furnish copies of public records if the custodian has the necessary duplicating equipment.

(B) A citizen may request a copy of a public record in any medium in which the record is readily available or in any format to which it is readily convertible with the custodian's existing software.

(C) A custodian is not required to compile information or create a record in response to a request made under this section.

(3)(A)(i) Except as provided in § 25-19-109 or by law, any fee for copies shall not exceed the actual costs of reproduction, including the costs of the medium of reproduction, supplies, equipment, and maintenance, but not including existing agency personnel time associated with searching for, retrieving, reviewing, or copying the records.

(ii) The custodian may also charge the actual costs of mailing or transmitting the record by facsimile or other electronic means.

(iii) If the estimated fee exceeds twenty-five dollars (\$25.00), the custodian may require the requester to pay that fee in advance.

(iv) Copies may be furnished without charge or at a reduced charge if the custodian determines that the records have been requested primarily for noncommercial purposes and that waiver or reduction of the fee is in the public interest.

(B) The custodian shall provide an itemized breakdown of charges under subdivision (d)(3)(A) of this section.

(e) If a public record is in active use or storage and therefore not available at the time a citizen asks to examine it, the custodian shall certify this fact in writing to the applicant and set a date and hour within three (3) working days at which time the record will be available for the exercise of the right given by this chapter.

(f)(1) No request to inspect, copy, or obtain copies of public records shall be denied on the ground that information exempt from disclosure is commingled with nonexempt information.

(2) Any reasonably segregable portion of a record shall be provided after deletion of the exempt information.

(3) The amount of information deleted shall be indicated on the released portion of the record and, if technically feasible, at the place in the record where the deletion was made.

(4) If it is necessary to separate exempt from nonexempt information in order to permit a citizen to inspect, copy, or obtain copies of public records, the custodian shall bear the cost of the separation.

(g) Any computer hardware or software acquired by an entity subject to § 25-19-103(5)(A) after July 1, 2001, shall be in full compliance with the requirements of this section and shall not impede public access to records in electronic form.

(h) Notwithstanding any Arkansas law to the contrary, at the conclusion of any investigation conducted by a state agency in pursuit of civil penalties against the subject of the investigation, any settlement agreement entered into by a state agency shall be deemed a public document for the purposes of this chapter. However, the provisions of this subsection shall not apply to any investigation or settlement agreement involving any state tax covered by the Arkansas Tax Procedure Act, § 26-18-101 et seq.

History. Acts 1967, No. 93, § 4; 1977, No. 652, § 2; A.S.A. 1947, § 12-2804; Acts 1987, No. 49, § 1; 1989 (3rd Ex. Sess.), No. 8, § 1; 1993, No. 895, § 1; 1997, No. 540, § 52; 1997, No. 873, § 1; 1997, No. 1335, § 1; 1999, No. 1093, § 1; 2001, No. 1259, § 1; 2001, No. 1336, § 1; 2001, No. 1653, § 2; 2003, No. 213, § 1; 2003, No. 275, § 2; 2003, No. 763, § 2; 2003, No. 1214, § 1; 2005, No. 259, § 2; 2005, No. 2003, § 1; 2007, No. 268, § 2; 2007, No. 726, §§ 1, 2; 2007, No. 998, § 2; 2009, No. 631, § 2; 2009, No. 1291, § 1; 2011, No. 99, § 2; 2011, No. 168, § 1; 2013, No. 145, § 1; 2013, No. 235, § 2; 2013, No. 411, § 1.

Publisher's Notes. This section is being set out to reflect a correction in (b)(9).

Amendments. The 2009 amendment by No. 631 substituted "July 1, 2011" for "July 1, 2009" in (b)(18)(C) and made a minor stylistic change.

The 2009 amendment by No. 1291 added (b)(19) and made related changes.

The 2011 amendment by No. 99 substituted "July 1, 2013" for "July 1, 2011" in (b)(18)(C).

The 2011 amendment by No. 168 redesignated former (a)(1)(B)(i)(a) and (b) as (a)(1)(B)(i) and (ii), and deleted former (a)(1)(B)(ii); deleted "of the Department of Correction and the Department of Com-

munity Correction" following "public records" in present (a)(1)(B); and substituted "(a)(1)(B)(i)" for "(a)(1)(B)(i)(a)" in present (a)(1)(B)(ii).

The 2013 by No. 145 amendment substituted "government or" for "governments" in the introductory language of (b)(19); in (b)(19)(A), substituted "to assist" for "for the purpose of assisting" and "to determine the" for "for determining"; substituted "The name" for "Names" in (b)(19)(B); and deleted (b)(19)(C).

The 2013 amendment by No. 235 substituted "under (b)(18)(A)" for "shall" in (b)(18)(B); and deleted former (b)(18)(C).

The 2013 amendment by No. 411, in (b)(13), added "Personal contact information, including without limitation home or mobile telephone numbers, personal email addresses, and" at the beginning and inserted "nonelected school employees" following "nonelected municipal employees."

Cross References. Confidentiality of military discharge records, § 14-2-102(c)-(e).

Disposition of criminal data to the central repository, § 12-12-1505.

Dissemination of criminal history information, requirements and exceptions, § 12-12-1504.

RESEARCH REFERENCES

ALR. Disclosure of Electronic Data under State Public Records and Freedom of Information Acts. 54 A.L.R.6th 653.

U. Ark. Little Rock L.J. Survey of Legislation, 2003 Arkansas General Assembly, Local Government, Protection for Veterans, 26 U. Ark. Little Rock L. Rev. 433.

Information Act, 26 U. Ark. Little Rock L. Rev. 493.

Survey of Legislation, 2003 Arkansas General Assembly, Local Government, Protection for Veterans, 26 U. Ark. Little Rock L. Rev. 433.

CASE NOTES

ANALYSIS

Construction.
Applicability.
Attorney-Client Privilege.
Parties Entitled.
Records Subject to Inspection.
Redaction.

Construction.

After reviewing §§ 25-19-102, 25-19-106, and this section, the court found nothing in the Freedom of Information Act that specifies that the communications media by which the public's business is conducted are limited to publicly owned communications; thus, the court rejected a state employee's claim that the employee was asked to violate the law by communicating with the governor via a private email address and, thus, the employee's subsequent resignation was voluntary without good cause and the employee was not entitled to benefits under § 11-10-513(a)(1). *Bradford v. Dir., Empl. Sec. Dep't.*, 83 Ark. App. 332, 128 S.W.3d 20 (2003).

Trial court erred by finding that the driver received a timely and compliant response from appellees because the re-

sponse, refusing to comply with the request on the ground that it was too broad and too burdensome, was in direct conflict with the Freedom of Information Act (FOIA) and with the court's case law interpreting the FOIA. *Daugherty v. Jacksonville Police Dep't*, 2012 Ark. 264, — S.W.3d — (2012).

Applicability.

Where the records in question are established as "public records" pursuant to § 25-19-103(1) of the Arkansas Freedom of Information Act and not otherwise exempted from disclosure, the appropriate governmental agency shall have the responsibility to provide reasonable access for examination and copying of such public records which are in existence at the time of the request, as provided in this section. *Fox v. Perroni*, 358 Ark. 251, 188 S.W.3d 881 (2004).

Circuit judge's law clerk's personal check was a public record under the Arkansas Freedom of Information Act (FOIA), § 25-19-101 et seq., and the circuit judge was its custodian under § 25-19-103(1) and had to disclose the check to an attorney and his counsel pursuant to this section where the circuit judge in-

structed his clerk to obtain copies of certain documents from a federal court for use in contempt proceedings against the attorney, and where the attorney and his counsel sought disclosure of the check under FOIA. *Fox v. Perroni*, 358 Ark. 251, 188 S.W.3d 881 (2004).

Seed sample did not meet the definition of a “public record” under § 25-19-103 because it could not be said to be an object on which records and information may be stored or represented; the list of items that could be mediums did not contain a seed or any other object, and removal and destructive testing of seed samples went far beyond the inspection and copying of public records. *Nolan v. Little*, 359 Ark. 161, 196 S.W.3d 1 (2004).

Because not all of the emails that were requested by a newspaper were “public records” pursuant to subdivision (a)(1)(A) of this section, but there was not enough evidence to discern which of them were “public records”, an in camera review was needed to make that determination. The definition of “public records” under the Freedom of Information Act, § 25-19-101 et seq., was content-driven, and the only way to determine the content was to examine the emails because an analysis of messages based solely on the context in which they were created, without an examination of the content of the messages, was insufficient to determine whether the messages were “public records”. *Pulaski County v. Ark. Democrat-Gazette, Inc.*, 370 Ark. 435, 260 S.W.3d 718 (2007).

Trial court erred by finding that appellees’ requirement that the driver pay a deposit of \$2,475 to obtain the requested records did not violate the Freedom of Information Act because § 25-19-109 did not apply, as the driver stated that she requested only copies of the recordings and did not ask for any type of special conversion or any type of compilation. The applicable provision to the driver’s request was subsection (d) of this section, as she simply requested a copy of the files, and therefore appellees could not charge fees that exceeded the cost of reproduction and could not include the hourly rate of a captain in assessing costs to the driver. *Daugherty v. Jacksonville Police Dep’t*, 2012 Ark. 264, — S.W.3d — (2012).

Attorney-Client Privilege.

Litigation files prepared by an attorney hired by private medical malpractice li-

ability insurance carriers to represent three doctors who worked for the state university were not subject to disclosure under the Freedom of Information Act, §§ 25-19-101 to 25-19-110, because the documents were not public records for purposes of subdivision (a)(1)(A) of this section. As the doctors were sued in their personal capacity, simply changing the records request to name the doctors in their official capacity did not convert the documents from private to public; the documents were also attorney work-product and subject to the attorney-client privilege. *Harrill & Sutter, PLLC v. Far-rar*, 2012 Ark. 180, — S.W.3d — (2012).

Parties Entitled.

Pursuant to this section, while the contractor possessed the records requested, it was not an entity covered by the Freedom of Information Act (FOIA), § 25-19-101 et seq., which would render it subject to suit under the FOIA; therefore, the association’s suit was reversed and dismissed. *Nabholz Constr. Corp. v. Contrs. for Pub. Prot. Ass’n*, 371 Ark. 411, 266 S.W.3d 689 (2007).

Records Subject to Inspection.

Judgment was properly awarded to appellee in an action against a police chief, in the chief’s capacity as the custodian of records for the police department, for violation of the Arkansas FOIA because an officer’s use-of-force reports describing an incident with appellee did not fall within the exemption in subdivision (c)(1) of this section for employee evaluation or job performance records. *Thomas v. Hall*, 2012 Ark. 66, 399 S.W.3d 387 (2012).

Redaction.

Legal opinions rendered in tax cases under 006-05-009 Ark. Code R. § GR-75(B) are subject to disclosure to a company because they are “otherwise kept” public records under § 25-19-103(5)(A); however, any and all identifying facts and information have to be fully redacted under subdivision (f)(1)–(3) of this section. Moreover, the legal opinions are not confidential because § 26-18-303(a)(1) does not cover 006-05-009 Ark. Code R. § GR-75(B); state law does not require that the opinions be kept by or filed with the Director of the Department of Finance and Administration. *Ryan & Co. v. Weiss*, 371 Ark. 43, 263 S.W.3d 489 (2007).

Cited: *Jegley v. Picado*, 349 Ark. 600, 80 S.W.3d 332 (2002); *Watkins v. Dale*, 2011 Ark. App. 385, — S.W.3d — (2011).

25-19-106. Open public meetings.

(a) Except as otherwise specifically provided by law, all meetings, formal or informal, special or regular, of the governing bodies of all municipalities, counties, townships, and school districts and all boards, bureaus, commissions, or organizations of the State of Arkansas, except grand juries, supported wholly or in part by public funds or expending public funds, shall be public meetings.

(b)(1) The time and place of each regular meeting shall be furnished to anyone who requests the information.

(2) In the event of emergency or special meetings, the person calling the meeting shall notify the representatives of the newspapers, radio stations, and television stations, if any, located in the county in which the meeting is to be held and any news media located elsewhere that cover regular meetings of the governing body and that have requested to be so notified of emergency or special meetings of the time, place, and date of the meeting. Notification shall be made at least two (2) hours before the meeting takes place in order that the public shall have representatives at the meeting.

(c)(1) Executive sessions will be permitted only for the purpose of considering employment, appointment, promotion, demotion, disciplining, or resignation of any public officer or employee. The specific purpose of the executive session shall be announced in public before going into executive session.

(2)(A) Only the person holding the top administrative position in the public agency, department, or office involved, the immediate supervisor of the employee involved, and the employee may be present at the executive session when so requested by the governing body, board, commission, or other public body holding the executive session.

(B) Any person being interviewed for the top administrative position in the public agency, department, or office involved may be present at the executive session when so requested by the governing board, commission, or other public body holding the executive session.

(3) Executive sessions must never be called for the purpose of defeating the reason or the spirit of this chapter.

(4) No resolution, ordinance, rule, contract, regulation, or motion considered or arrived at in executive session will be legal unless, following the executive session, the public body reconvenes in public session and presents and votes on the resolution, ordinance, rule, contract, regulation, or motion.

(5)(A) Boards and commissions of this state may meet in executive session for purposes of preparing examination materials and answers to examination materials that are administered to applicants for licensure from state agencies.

(B) Boards and commissions are excluded from this chapter for the administering of examinations to applicants for licensure.

(6) Subject to the provisions of subdivision (c)(4) of this section, a public agency may meet in executive session for the purpose of considering, evaluating, or discussing matters pertaining to public water system security as described in § 25-19-105(b)(18).

History. Acts 1967, No. 93, § 5; 1975 (Extended Sess., 1976), No. 1201, § 1; 1985, No. 843, § 1; A.S.A. 1947, § 12-2805; reen. Acts 1987, No. 1001, § 1; 1999, No. 1589, § 1; 2001, No. 1259, § 2; 2003, No. 763, § 3; 2005, No. 259, § 3; 2007, No. 268, § 3; 2007, No. 998, § 3; 2009, No. 631, § 3; 2011, No. 99, § 3; 2013, No. 235, § 3.

Amendments. The 2009 amendment substituted “July 1, 2011” for “July 1, 2009” in (c)(6)(B) and made a minor stylistic change.

The 2011 amendment substituted “July 1, 2013” for “July 1, 2011” in (c)(6)(B).

The 2013 amendment redesignated former (c)(6)(A) as (c)(6), and deleted (c)(6)(B).

RESEARCH REFERENCES

Ark. L. Rev. Recent Developments, Freedom of Information Act — Public Meetings Requirement, 57 Ark. L. Rev. 1015.

Note, *Harris v. City of Fort Smith: Arkansas’s Sunshine Clouds Over*, 59 Ark. L. Rev. 147.

CASE NOTES

ANALYSIS

In General.
Construction.
Applicability.
Informal Meetings.
No Violation.

In General.

Circuit court’s determination that § 25-19-104 and this section were unconstitutional was improper because declaratory relief was inappropriate under § 16-111-104 as appellees did not yet have a case or controversy ready for decision by the courts. Appellees received a legal opinion on the effects of certain provisions of the state’s Freedom of Information Act rather than resolution of an actual controversy. *McCutchen v. City of Fort Smith*, 2012 Ark. 452, — S.W.3d —, 2012 Ark. LEXIS 485 (Dec. 6, 2012).

Construction.

After reviewing §§ 25-19-102, 25-19-105, and this section, the court found nothing in the Freedom of Information Act that specifies that the communications media by which the public’s business is conducted are limited to publicly owned communications; thus, the court rejected

a state employee’s claim that the employee was asked to violate the law by communicating with the governor via a private email address and, thus, the employee’s subsequent resignation was voluntary without good cause and the employee was not entitled to benefits under § 11-10-513(a)(1). *Bradford v. Dir., Empl. Sec. Dep’t.*, 83 Ark. App. 332, 128 S.W.3d 20 (2003).

Applicability.

City administrator’s succession of one-on-one conversations with each member of the city’s board of directors violated the “open meetings” provision of the Freedom of Information Act, §§ 25-19-101 — 25-19-109; through its conversations the board held a meeting within the intent of the FOIA such that the city’s actions resulted in a consensus being reached on a given issue, thus rendering the formal meeting held before the public a mere charade. *Harris v. City of Fort Smith*, 86 Ark. App. 20, 158 S.W.3d 733 (2004), *aff’d*, 359 Ark. 355, 197 S.W.3d 461 (2004).

Informal Meetings.

Where city board members held one-on-one meetings discussing the potential purchase of property, the meetings violated

subsection (a) of this section because the members had made up their minds before the public meeting and, thus, the meetings constituted board meetings under § 25-19-103(4). *Harris v. City of Fort Smith*, 359 Ark. 355, 197 S.W.3d 461 (2004).

No Violation.

In circumstances in which a city administrator, prior to a board study session,

prepared a memorandum and draft ordinance and provided the documents to individual board members, no violation of this section of the state FOIA occurred because only information was provided; no solicitation of votes for the proposal took place. *McCutchen v. City of Fort Smith*, 2012 Ark. 452, — S.W.3d —, 2012 Ark. LEXIS 485 (Dec. 6, 2012).

25-19-107. Appeal from denial of rights — Attorney's fees.

(a) Any citizen denied the rights granted to him or her by this chapter may appeal immediately from the denial to the Pulaski County Circuit Court or to the circuit court of the residence of the aggrieved party, if the State of Arkansas or a department, agency, or institution of the state is involved, or to any of the circuit courts of the appropriate judicial districts when an agency of a county, municipality, township, or school district, or a private organization supported by or expending public funds, is involved.

(b) Upon written application of the person denied the rights provided for in this chapter, or any interested party, it shall be mandatory upon the circuit court having jurisdiction to fix and assess a day the petition is to be heard within seven (7) days of the date of the application of the petitioner, and to hear and determine the case.

(c) Those who refuse to comply with the orders of the court shall be found guilty of contempt of court.

(d)(1) In any action to enforce the rights granted by this chapter, or in any appeal therefrom, the court shall assess against the defendant reasonable attorney's fees and other litigation expenses reasonably incurred by a plaintiff who has substantially prevailed unless the court finds that the position of the defendant was substantially justified.

(2) If the defendant has substantially prevailed in the action, the court may assess expenses against the plaintiff only upon a finding that the action was initiated primarily for frivolous or dilatory purposes.

(e)(1) Notwithstanding subsection (d)(1) of this section, the court shall not assess reasonable attorney's fees or other litigation expenses reasonably incurred by a plaintiff against the State of Arkansas or a department, agency, or institution of the state.

(2)(A) A plaintiff who substantially prevailed in an action under this section against the State of Arkansas or a department, agency, or institution of the state may file a claim with the Arkansas State Claims Commission to recover reasonable attorney's fees and other litigation expenses reasonably incurred.

(B) A claim for reasonable attorney's fees and litigation expenses reasonably incurred in an action against the State of Arkansas or a department, agency, or institution of the state shall be filed with the commission pursuant to § 19-10-201 et seq. within sixty (60) days of the final disposition of the appeal under subsection (a) of this section.

History. Acts 1967, No. 93, § 6; A.S.A. 1947, § 12-2806; Acts 1987, No. 49, § 2; 2009, No. 440, § 2.

Amendments. The 2009 amendment substituted “the State of Arkansas or a department, agency, or institution” for “an agency” in (a); subdivided (d) and deleted

“or that other circumstances make an award of these expenses unjust. However, no expense shall be assessed against the State of Arkansas or any of its agencies or departments” following “substantially justified” in (d)(1); and added (e).

RESEARCH REFERENCES

ALR. Exhaustion of administrative remedies as prerequisite to judicial action to compel disclosure under state freedom of information acts. 114 A.L.R.5th 283.

Construction and application of state freedom of information act provisions concerning award of attorney’s fees and other litigation costs. 118 A.L.R.5th 1.

CASE NOTES

Fees and Costs.

Arkansas Department of Human Services was a department of the State of Arkansas, and a suit against a state official in his official capacity was not a suit against that person but, rather, was a suit against that official’s office, thus, even though the individual prevailed in obtaining certain public records under the Arkansas Freedom of Information Act, § 25-19-101 et seq., under subsection (d) of this section, no award of attorney’s fees could be assessed against either the Department or the director, who was acting as a state official in his official capacity; further, as an individual, the director had no administrative control of the public records as he would have had control of the public records only in his official capacity. *George v. Ark. Dep’t of Human Servs.*, 88 Ark. App. 135, 195 S.W.3d 399 (2004).

Circuit court did not abuse its discretion

in denying the citizen an award of attorneys’ fees where there was substantial justification in appellees’ position that their actions did not constitute a violation of the Freedom of Information Act and that their actions were not undertaken in bad faith. *Harris v. City of Fort Smith*, 366 Ark. 277, 234 S.W.3d 875 (2006).

Circuit court abused its discretion in awarding attorney fees under subsection (d) of this section because the mother of a decedent who died in police custody did not even partially prevail on her FOIA claim, let alone substantially prevail, where the circuit court’s order specifically found that the city police department had responded promptly and provided public records as quickly as possible but that the records of its internal affairs department were not subject to disclosure. *City of Little Rock v. Carpenter*, 374 Ark. 511, 288 S.W.3d 647 (2008).

25-19-109. Special requests for electronic information.

CASE NOTES

Fees.

Trial court erred by finding that appellees’ requirement that the driver pay a deposit of \$2,475 to obtain the requested records did not violate the Freedom of Information Act because this section did not apply, as the driver stated that she requested only copies of the recordings and did not ask for any type of special conversion or any type of compilation. The

applicable provision to the driver’s request was § 25-19-105(d), as she simply requested a copy of the files, and therefore appellees could not charge fees that exceeded the cost of reproduction and could not include the hourly rate of a captain in assessing costs to the driver. *Daugherty v. Jacksonville Police Dep’t*, 2012 Ark. 264, — S.W.3d — (2012).

25-19-110. Exemptions.

(a) Beginning July 1, 2009, in order to be effective, a law that enacts a new exemption to the requirements of this chapter or that substantially amends an existing exemption to the requirements of this chapter shall state that the record or meeting is exempt from the Freedom of Information Act of 1967, § 25-19-101 et seq.

(b) For purposes of this section:

(1) An exemption from the requirements of this chapter is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records; and

(2) An exemption from the requirements of this chapter is not substantially amended if the amendment narrows the scope of the exemption.

History. Acts 2009, No. 184, § 1.

CHAPTER 20**INTERLOCAL COOPERATION ACT****SUBCHAPTER.**

1. GENERAL PROVISIONS.

4. ARKANSAS MUNICIPAL ELECTRIC UTILITY INTERLOCAL COOPERATION ACT OF 2003.

5. CONSOLIDATED WASTEWATER SYSTEMS.

SUBCHAPTER 1 — GENERAL PROVISIONS**SECTION.**

25-20-103. Definitions.

25-20-104. Agreements for joint or cooperative action — Authority to make — Requirements generally.

25-20-101. Title.**CASE NOTES**

Cited: City of Maumelle v. Jeffrey Sand Co., 353 Ark. 686, 120 S.W.3d 55 (2003).

25-20-103. Definitions.

As used in this chapter:

(1) “Public agency” means any:

(A) School district;

(B) Political subdivision of this state;

(C) Agency of the state government or of the United States;

(D) Political subdivision of another state;

(E) Water district created under the provisions of the Regional Water Distribution District Act, § 14-116-101 et seq.;

(F) Governing body of a municipal electric utility as defined in § 25-20-402; and

(G) Fire department organized under the laws of this state if the fire department:

(i) Offers fire protection services to unincorporated areas; and

(ii) Has received approval by its quorum court for participation in an interlocal cooperation agreement; and

(2) "State" means a state of the United States and the District of Columbia.

History. Acts 1967, No. 430, § 3; 1973, 180, § 1; A.S.A. 1947, § 14-903; Acts No. 415, § 1; 1975, No. 208, § 4; 1983, No. 2003, No. 366, § 2.

25-20-104. Agreements for joint or cooperative action — Authority to make — Requirements generally.

(a) Any governmental powers, privileges, or authority exercised or capable of exercise by a public agency of this state alone may be exercised and enjoyed jointly with any other public agency of this state which has the same powers, privileges, or authority under the law and jointly with any public agency of any other state of the United States which has the same powers, privileges, or authority, but only to the extent that laws of the other state or of the United States permit the joint exercise or enjoyment.

(b) Any two (2) or more public agencies may enter into agreements with one another for joint cooperative action pursuant to the provisions of this chapter. Appropriate action by ordinance, resolution, or otherwise pursuant to law of the governing bodies of the participating public agencies shall be necessary before the agreement may enter into force.

(c) Any agreement for joint or cooperative action shall specify the following:

(1) Its duration;

(2) The precise organization, composition, and nature of any separate legal or administrative entity created thereby, together with the powers delegated to it, provided that the entity may be legally created;

(3) Its purposes;

(4) The manner of financing the joint or cooperative undertaking and of establishing and maintaining a budget therefor;

(5) The permissible methods to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon the partial or complete termination; and

(6) Any other necessary and proper matters.

(d) In the event that the agreement does not establish a separate legal entity to conduct the joint or cooperative undertaking, in addition to the items enumerated in subdivisions (c)(1) and (c)(3)-(6) of this section, the agreement shall contain the following:

(1) Provisions for an administrator or a joint board responsible for administering the joint or cooperative undertaking. In the case of a

joint board, public agencies party to the agreement shall be represented; and

(2) The manner of acquiring, holding, and disposing of real and personal property used in the joint or cooperative undertaking.

(e) No agreement made pursuant to this chapter shall relieve any public agency of any obligation or responsibility imposed upon it by law, except that, to the extent of actual and timely performance thereof by a joint board or other legal or administrative entity created by an agreement made hereunder, performance may be offered in satisfaction of the obligation or responsibility.

(f)(1) Every agreement made under this section prior to and as a condition precedent to its entry into force shall be submitted to the Attorney General, who shall determine whether the agreement is in proper form and compatible with the laws of this state.

(2) The Attorney General shall approve any agreement submitted to him or her under this section unless he or she shall find that it does not meet the conditions set forth in this section and shall detail, in writing addressed to the governing bodies of the public agencies concerned, the specific respects in which the proposed agreement fails to meet the requirements of law.

(3) Failure to disapprove an agreement submitted hereunder within sixty (60) days of its submission shall constitute approval thereof.

(g) Financing of joint projects by agreement shall be as provided by law.

(h) In addition to other specific grants of authority as provided in the Arkansas Constitution and statutes and in addition to the formal cooperation authorized by this chapter, cities, towns, counties, and other units of government are authorized to associate and cooperate with one another on an informal basis without complying with the detailed procedure set out in this section.

(i) In addition to the legal or administrative entities which may otherwise be legally created under Arkansas statutes, public agencies may create a separate legal entity in the form of a public body corporate and politic pursuant to:

(1) Section 25-20-201 et seq. for the purpose of constructing, operating, and maintaining a public library system;

(2) Section 25-20-301 et seq. for the purpose of constructing, owning, operating, financing, and maintaining a consolidated waterworks system; or

(3) Section 25-20-501 et seq. for the purpose of constructing, operating, financing, and maintaining a consolidated wastewater system.

History. Acts 1967, No. 430, § 4; 1979, No. 52, § 1; A.S.A. 1947, § 14-904; Acts 1995, No. 813, § 1; 2001, No. 982, § 2; 2009, No. 1371, § 2.

Amendments. The 2009 amendment added (i)(3) and made related changes.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of assembly, Public Agencies, 24 U. Ark. Little
Legislation, 2001 Arkansas General As- Rock L. Rev. 601.

SUBCHAPTER 3 — CONSOLIDATED WATERWORKS SYSTEMS

25-20-301. Title.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of assembly, Public Agencies, 24 U. Ark. Little
Legislation, 2001 Arkansas General As- Rock L. Rev. 601.

SUBCHAPTER 4 — ARKANSAS MUNICIPAL ELECTRIC UTILITY INTERLOCAL
COOPERATION ACT OF 2003

SECTION.	SECTION.
25-20-401. Title.	25-20-414. Tax-exempt status of property owners and income.
25-20-402. Definitions.	25-20-415. Immunity.
25-20-403. Creation.	25-20-416. No public utility status.
25-20-404. Powers and duties of board of commissioners.	25-20-417. Annual report and audit.
25-20-405. Powers of authority.	25-20-418. Provisions supplemental and controlling.
25-20-406. Operation.	25-20-419. Construction.
25-20-407. Eminent domain.	25-20-420. Use of revenue.
25-20-408. Financing.	25-20-421. Effect of other laws.
25-20-409. Lien in favor of bond holders.	25-20-422. [Repealed.]
25-20-410. Refunding bonds.	25-20-423. Termination or dissolution.
25-20-411. Security deposit of public funds.	25-20-424. Control of electric transmission facilities.
25-20-412. No personal liability.	25-20-425. Sham transactions prohibited.
25-20-413. Zoning exemption.	

25-20-401. Title.

This subchapter shall be known and may be cited as the “Arkansas Municipal Electric Utility Interlocal Cooperation Act of 2003”.

History. Acts 2003, No. 366, § 1.

25-20-402. Definitions.

As used in this subchapter:

- (1) “Authority” means a municipal electric consolidated authority created pursuant to this subchapter;
- (2) “Electric project” means any:
 - (A) Plant, works, system, or facilities and real and personal property of any nature associated therewith, together with all parts thereof and appurtenances thereto, that are used or useful in the generation, transmission, coordination, purchase, sale, exchange, or interchange of electric capacity and energy, and provision of ancillary services, including facilities and property for the acquisition, extraction, conversion, transportation, storage, reprocessing, or disposal of

fuel and other materials of any kind for such purposes or that may be necessary or advisable for the proper and efficient operation of the authority's facilities;

(B) Interest in or right to the use, services, or electric capacity and energy of any such plant, works, system, or facilities;

(C) Study to determine the feasibility or costs of any of the foregoing, including, but not limited to, engineering, legal, financial, and other services necessary to determine the legality and financial and engineering feasibility of any electric project; and

(D) Contract or agreement associated with generation, transmission, coordination, purchase, sale, exchange, or interchange of electric capacity and energy or ancillary services;

(3) "Electric transmission system" and "electric transmission facility" mean electric utility properties and facilities necessary for transmitting electricity at sixty-nine kilovolts (69 kV) phase-to-phase or higher and not for service to a directly tapped, retail, end-use customer or customers;

(4) "Governing body of a municipal electric utility" means the city council, board of directors, improvement district commissioners, or other elected or appointed authority having the rate-making and debt-issuance authority for the municipal electric utility;

(5) "Municipality" means any city of the first class or city of the second class incorporated under the laws of the State of Arkansas or any commission or agency thereof, including any municipally owned or municipally controlled corporation, any improvement district, consolidated public or municipal utility system improvement district, or nonprofit corporation lessee of such an entity;

(6) "Municipal electric utility" means any electric generation, transmission, or distribution system owned or operated on July 16, 2003, by any city of the first class, city of the second class, or a town incorporated under the laws of the State of Arkansas or any commission, department, division, or agency thereof, including any municipally owned or municipally controlled corporation, improvement district, consolidated public or municipal utility system improvement district, or nonprofit corporation lessee of such an entity;

(7) "Person" means any natural person, firm, corporation, electric cooperative corporation, energy service provider, nonprofit corporation, association, or improvement district; and

(8) "Public utility" means any person or entity engaged in the generation or sale of electric power and energy that is subject to regulation by the Arkansas Public Service Commission.

History. Acts 2003, No. 366, § 1.

25-20-403. Creation.

(a)(1) The governing bodies of any two (2) or more municipal electric utilities entering into an interlocal agreement under the Interlocal Cooperation Act, § 25-20-101 et seq., are authorized to create an

authority as a separate legal entity for the purposes set forth in this subchapter.

(2) For the purposes of this section, a rural electric cooperative corporation that is not a member of a generation or transmission cooperative or a municipal electric utility system in another state may join in the formation of an authority.

(b) An authority created under this subchapter shall be referenced as an Arkansas Municipal Electric Utility Consolidated Authority # 1, #2, #3, and so forth as determined by the Secretary of State.

(c)(1) The governing body of a municipal electric utility wishing to create an authority under this subchapter shall approve by ordinance or resolution or otherwise pursuant to law an interlocal agreement specifying the matters set forth in § 25-20-104.

(2) An application shall be filed with the Secretary of State.

(3) Review by the Secretary of State as contemplated by this section shall be in addition to those filings required by §§ 25-20-104(f) and 25-20-105(a).

(d) An interlocal agreement shall:

(1) Specify any limitations on the exercise of the authority's powers, including such matters, if any, as to which the governing bodies of the municipal electric utilities reserve rights to approve, disapprove, or otherwise participate in any exercise of the authority's powers;

(2) Provide for reasonable payments in lieu of taxes or other payments by the authority to the participating governing bodies of the municipal electric utilities, as the governing bodies may deem appropriate;

(3) Specify the:

(A) Number of commissioners of the authority;

(B) Terms of office of the commissioners;

(C) Manner of appointing or electing the commissioners;

(D) Residency requirements applicable to commissioners; and

(E) Voting rights of each commissioner. The voting rights may vary by commissioner; and

(4) Set forth other matters not inconsistent with this subchapter with respect to the creation and operation of the authority as the governing bodies of the municipal electric utilities may deem necessary or appropriate.

(e)(1) An application to create an authority under this subchapter shall then be prepared, setting forth:

(A) A request that an authority be created under this subchapter;

(B) The proposed name for the authority;

(C) The names of the participating governing bodies of municipal electric utilities;

(D) The number of commissioners of the authority;

(E) The manner in which commissioners of the authority will be appointed or elected and the residency requirements applicable to commissioners;

(F) The voting rights of each commissioner;

(G) Special procedures for amending the certificate of incorporation, if any; and

(H) Other matters not inconsistent with this subchapter with respect to the creation and operation of the authority as the governing bodies of the municipal electric utilities may deem necessary or appropriate.

(2) The application shall be signed on behalf of each governing body of municipal electric utilities by an authorized official thereof.

(f)(1) In addition to the filing requirements contained in §§ 25-20-104(f) and 25-20-105(a), the Secretary of State shall examine the application and, if the Secretary of State finds that the name proposed for the authority is not identical with that of any other corporation, agency, or instrumentality of the State of Arkansas, so nearly similar as to lead to confusion and uncertainty, or otherwise deceptively misleading, the Secretary of State shall:

(A) Receive and file the application;

(B) Record the application in an appropriate book of record in his or her office;

(C) Make and issue a certificate of incorporation under the seal of the State of Arkansas setting forth the name of the authority and the names of the participating municipal electric utilities; and

(D) Record the certificate in an appropriate book of record in his or her office.

(2) A copy of the certificate of incorporation certified by the Secretary of State shall be admissible in evidence in any suit, action, or proceeding involving the validity or enforcement of or relating to any contract of the authority and shall be conclusive proof of the filing and contents of the certificate and the effective creation of the authority, absent fraud in the premises being established.

(g)(1) Any certificate of incorporation issued by the Secretary of State under this subchapter may be amended from time to time:

(A) In the manner provided in the certificate of incorporation then existing; or

(B) If the certificate of incorporation does not specify a procedure for its amendment, with the consent of a majority of the commissioners of the authority who are entitled to vote.

(2)(A) The amendment shall be signed by an officer or other authorized person of the authority who shall certify that the certificate of incorporation has been amended in accordance with the procedures of this subchapter and, as applicable, in the manner prescribed in the then-existing certificate of incorporation.

(B) Upon filing the amendment with the Secretary of State in the manner provided in this section, the Secretary of State shall make and issue an amendment to the certificate of incorporation.

25-20-404. Powers and duties of board of commissioners.

(a) All powers of an authority created under this subchapter shall be exercised by, or under the authority of, and the business and affairs of the authority managed under the direction of, its board of commissioners, subject to any limitation set forth in the authority's interlocal agreement.

(b) The duties of the board shall be stated in the interlocal agreement and may include, but shall not be limited to:

(1) Appointing a chief executive officer who shall not be a member of the board and setting compensation and other terms of employment for the chief executive officer;

(2) Approving all budgets of the authority;

(3) Adopting such rules, regulations, and by-laws as the board may deem necessary and expedient for the proper ownership and operation of its electric projects. The rules, regulations, and by-laws may be altered, changed, or amended at the board's discretion; and

(4) Performing other duties as set forth in the interlocal agreement.

History. Acts 2003, No. 366, § 1.

25-20-405. Powers of authority.

Each authority created under this subchapter shall have the power to:

(1) Have perpetual succession as a body politic and corporate;

(2) Maintain offices as it may deem appropriate;

(3) Execute and perform contracts;

(4) Sue and be sued;

(5) Apply for and receive permits, licenses, certificates, and approvals as may be necessary and own and operate facilities in accordance with this subchapter and the interlocal agreement;

(6) Employ the services of all personnel necessary to its operations and, in connection therewith, adopt and implement such healthcare, disability, bonus, retirement, and other employee benefit plans as the board of commissioners shall deem appropriate;

(7) Employ the services of professionals;

(8) Purchase insurance, maintain reserves for self-insurance, and become self-insured for the payment of compensation under the Workers' Compensation Law, § 11-9-101 et seq., and in compliance with the requirements of § 11-9-404(a)(2), provided that deposit of an indemnity bond, letter of credit, or securities shall not be required;

(9) Plan, purchase, receive, own, hold, improve, use, repair, lease, sell, convey, exchange, transfer, assign, mortgage, pledge, and otherwise acquire, dispose of, and deal with real and personal property and any legal or equitable interest therein in its own name;

(10) Apply for, receive, and use loans, grants, taxes, donations, and contributions from any public agency or other lawful source, including any proceeds from the sale of bonds;

(11) Borrow money on a secured or unsecured basis, and in connection therewith, issue bonds, promissory notes, or other evidence of indebtedness and make and deliver indentures, mortgages, pledges, security agreements, financing statements, and other instruments encumbering assets of the authority;

(12) Make payments to the governing body of the municipal electric utilities in such amounts as may be required or permitted by the authority's interlocal agreement and to any political subdivision in which an electric project is situated in such amounts as may be agreed to by the authority and the political subdivision;

(13) Exercise other powers, privileges, and authorities as the participating municipal electric utilities shall have delegated to the authority by their interlocal agreement, subject to restrictions of applicable law;

(14) Plan, construct, own, manage, operate, repair, finance, improve, extend, acquire, reconstruct, equip, sell, lease, contract concerning, deal in, dispose of, and maintain electric projects, as specified in the interlocal agreement between the governing bodies of the municipal electric utilities forming an authority;

(15) Fix, charge, collect, and, from time to time, change the rates for electricity and other goods and services provided by the authority, as specified in the interlocal agreement between the governing bodies of the municipal electric utilities forming an authority; and

(16) To the extent not inconsistent with applicable law, have other and further powers relating to the ownership and operation of an electric project as are now by law given to the governing body of any municipal electric utility and do all other acts and things necessary, convenient, or desirable to carry out the purposes of, and to exercise the powers granted to, the authority by this subchapter.

History. Acts 2003, No. 366, § 1.

25-20-406. Operation.

(a) It is the purpose of this subchapter to allow municipal electric utilities to utilize the provisions of the Interlocal Cooperative Act, § 25-20-101 et seq., for the purpose of planning, developing, and operating electric projects.

(b)(1) Participating municipal electric utilities are authorized to contribute to an authority such real and personal property as the governing body of the municipal electric utility deems necessary or appropriate to the ownership and operation of an electric project, or as otherwise allowed by law.

(2) However, any contributions of reserve funds held in trust under § 14-73-101 et seq. or any official action of the governing body of a municipal electric utility or other trust-related agreements shall be made on the condition that the funds may be used only for the purposes described in the applicable trust agreement and until so used shall remain in a trust fund complying with the requirements of § 14-73-101

et seq. or any applicable official action of the governing body of a municipal electric utility or any other trust-related agreements.

(c) Governing bodies of municipal electric utilities shall have the power to execute all contracts, leases, deeds, bills of sale, easements, assignments, and other instruments of conveyance as may be required or convenient to exercise the powers granted in this subchapter.

(d) No authority shall provide electric service at retail nor enter into contracts for the sale of energy or capacity to another party, other than the authority's participating municipal electric utilities, for a term of more than one (1) year, except in the event the Arkansas Public Service Commission authorizes a longer period pursuant to § 23-18-531[repealed].

History. Acts 2003, No. 366, § 1.

25-20-407. Eminent domain.

(a)(1) Any authority may acquire any private property that it may deem necessary for its purposes by exercising the power of eminent domain in the manner prescribed in § 18-15-301 et seq.

(2) However, power of eminent domain shall not apply to any personal or real property that may be owned or leased by a public utility or any personal or real property used to generate electric energy or sell electric energy at wholesale that is owned or leased by an exempt wholesale generator, as defined in § 23-1-101.

(b)(1) An authority shall not be authorized to acquire through condemnation procedures any plant, property, facility, or business owned or operated by any public utility or pipeline company subject to the jurisdiction of the Arkansas Public Service Commission or any personal or real property used to generate electric energy or to sell at wholesale electric energy owned or leased by an exempt wholesale generator, as defined in § 23-1-101.

(2) Notwithstanding § 25-20-108 and subsection (a) of this section, an authority shall be authorized to enter into any contract, agreement, or undertaking to purchase or otherwise acquire and to jointly construct or operate the plant, property, or facility.

History. Acts 2003, No. 366, § 1.

25-20-408. Financing.

(a)(1) An authority is authorized to use any available funds, revenues, and long-term or short-term debt to pay and provide for the costs and expenses of accomplishing the purposes authorized by this subchapter.

(2) For the purposes of paying the costs of any electric project or the portion thereof pertaining to its interest in the electric project, an authority may issue revenue bonds as provided in this subchapter.

(b)(1) Whenever any authority elects, consistent with this subchapter, to plan, purchase, construct, acquire, operate, or otherwise partici-

pate in an electric project or desires to construct improvements, betterments, repairs, and extensions thereto, it may issue revenue bonds under the provisions of this section to pay the costs thereof.

(2) The procedure for issuance of bonds shall be as provided in this section.

(c)(1) Bonds issued in accordance with this section shall be authorized by resolution of the board of commissioners.

(2) The bonds may be issued as registered bonds and may be exchangeable for bonds of another denomination or in another form.

(3) The bonds may:

(A) Be in such form and denominations as the board determines;

(B) Have such date or dates as the board determines;

(C) Be stated to mature at such time or times as the board determines;

(D) Bear interest payable at such times and at such rate or rates as the board determines;

(E) Be payable at such places within or without the State of Arkansas as the board determines;

(F) Be subject to such terms of redemption in advance of maturity at such prices as the board determines; and

(G) Contain such terms and conditions as the board determines.

(4) The bonds shall have all the qualities of and shall be deemed to be negotiable instruments under the laws of the State of Arkansas, subject to provisions of registration set forth in this subsection.

(5) The authorizing resolution may contain any other terms, covenants, and conditions that the board deems reasonable and desirable, including, without limitation, those pertaining to the:

(A) Maintenance of various funds and reserves;

(B) Nature and extent of any security for payment of the bonds;

(C) Priority among successive issues of bonds;

(D) Custody and application of the proceeds of the bonds;

(E) Collection and disposition of revenues;

(F) Investing and reinvesting of any moneys during periods not needed for authorized purposes; and

(G) Rights, duties, and obligations of the authority and the holders and registered owners of the bonds.

(d)(1) The authorizing resolution may provide for the execution of a trust indenture between the authority and any financial institution or trust company within or without the State of Arkansas.

(2) The trust indenture may contain any terms, covenants, and conditions that are deemed desirable by the board, including, without limitation, those pertaining to the:

(A) Maintenance of various funds and reserves;

(B) Nature and extent of any security for the payment of the bonds;

(C) Priority among successive issues of bonds;

(D) Custody and application of the proceeds of the bonds;

(E) Collection and disposition of revenues;

(F) Investing and reinvesting of any moneys during periods not needed for authorized purposes; and

(G) Rights, duties, and obligations of the authority and the holders and registered owners of the bonds.

(e)(1) Any authorizing resolution and any trust indenture relating to the issuance and security of the bonds shall constitute a contract between the authority and holders and registered owners of the bonds.

(2) The contract and all covenants, agreements, and obligations therein shall be promptly performed in strict compliance with the terms and provisions of the contract, and the covenants, agreements, and obligations of the authority may be enforced by mandamus or other appropriate proceeding at law or in equity.

(f) The rates, rents, fees, and other charges to be charged for the services of the electric project or the specified portion of the electric project with revenues pledged to the payment of the bonds shall be sufficient to provide for:

(1) The payment of all principal of and interest on all bonds as and when due; and

(2) Renewals and replacements and other appropriate costs for the electric project or the specified portion of the electric project with revenues pledged to the payment of the bonds.

(g)(1) The proceeds derived from the sale of the bonds shall be used solely for the purpose of:

(A) Planning, purchasing, constructing, acquiring, or participating in an electric project and making betterments, improvements, repairs, and extensions to an electric project;

(B) Paying interest on the bonds during or after the period of acquisition and construction or establishment of an electric project or betterments, improvements, and extensions thereto;

(C) Establishing any necessary reserves for the bonds;

(D) Paying the costs of issuing or refunding bonds; and

(E) Paying any other costs and expenditures of whatever nature incidental to the planning, construction, acquisition, establishment, or operation of an electric project or improvements, repairs, and betterments thereto.

(2) The terms "betterments", "improvements", and "extensions" include land that may be necessary or advisable for the proper and efficient operation of the authority's electric project.

(h)(1) Bonds issued under the provisions of this subchapter shall be payable solely from revenues derived from the electric project or any specified portion of the electric project.

(2) The bonds shall not in any event constitute an indebtedness of, nor pledge of the faith and credit of, the State of Arkansas or the participating municipal electric utilities or governing bodies of municipal electric utilities within the meaning of any constitutional provisions or limitations.

(3) It shall be plainly stated on the face of each bond that it:

(A) Is issued under the provisions of this subchapter;

(B) Does not constitute an indebtedness of the State of Arkansas or the participating municipal electric utilities or governing bodies of

municipal electric utilities within the meaning of any constitutional provisions or limitations; and

(C) Is not backed by the full faith and credit of the State of Arkansas or the participating municipal electric utilities or governing bodies of municipal electric utilities.

(4) Bonds issued under the provisions of this subchapter and the income from the bonds shall be exempt from all state, county, and municipal taxes, including, without limitation, all income, property, and inheritance taxes.

(i)(1) The bonds may be sold in the manner, either at public or private sale, and upon such terms as the board determines to be reasonable and expedient for effectuating the purposes of the authority.

(2) The bonds may be sold at any price the board may accept, including sale at discount.

(j) The bonds shall be executed in the manner provided for by the Registered Public Obligations Act of Arkansas, § 19-9-401 et seq.

History. Acts 2003, No. 366, § 1.

25-20-409. Lien in favor of bond holders.

(a) The payment of the principal of bonds issued under this subchapter and the interest on the bonds may be secured by a lien on and security interest in an electric project or any specified portion of an electric project.

(b) It shall not be necessary to the perfection of the lien and pledge for such purposes that the trustee in connection with the bond issue or the holders of the bonds take possession of the collateral security.

(c) Subject to whatever restrictions may be contained in the resolution or indenture governing the bonds, any holder of bonds issued under the provisions of this subchapter may enforce either at law or in equity the mortgage lien and may compel by proper suit the performance of the duties of the officers of the issuing authority set forth in this subchapter.

(d) If default occurs in the payment of the principal of or interest on any of the bonds, any court having jurisdiction in any proper action may appoint a receiver to administer the electric project or the specified portion of the electric project pledged to the payment of the bonds on behalf of the authority, with the power to:

(1) Charge and collect rates sufficient to provide for the payment of the:

(A) Bonds and the interest on the bonds; and

(B) Operating expenses of the electric project; and

(2) Apply the income and revenues in conformity with this subchapter and the resolution or indenture providing for the issuance of the bonds.

History. Acts 2003, No. 366, § 1.

25-20-410. Refunding bonds.

(a)(1) Bonds may be issued for the purpose of refunding any obligations issued under this subchapter.

(2) The refunding bonds may be combined with bonds issued under § 25-20-408 into a single issue.

(b)(1) When bonds are issued under this section for refunding purposes, the bonds may be either sold or delivered in exchange for the outstanding obligations.

(2) If sold, the proceeds may be either:

(A) Applied to the payment of the obligations refunded; or

(B) Deposited in escrow for the retirement thereof either at maturity or upon any authorized redemption date.

(c)(1) All bonds issued under this section in all respects shall be authorized, issued, and secured in the manner provided for other bonds issued under this subchapter and shall have all the attributes of those bonds.

(2) The resolution or indenture under which the refunding bonds are issued may provide that any of the refunding bonds shall have the same priority of lien on the revenues pledged for their payment as was enjoyed by the obligations refunded thereby.

History. Acts 2003, No. 366, § 1.

25-20-411. Security deposit of public funds.

Bonds issued under this subchapter shall be eligible to secure the deposit of public funds.

History. Acts 2003, No. 366, § 1.

25-20-412. No personal liability.

No commissioner or officer of the authority shall be liable personally for any reason arising from the issuance of bonds under this subchapter, unless he or she has acted with a willful and wanton intent.

History. Acts 2003, No. 366, § 1.

25-20-413. Zoning exemption.

Any authority maintaining facilities in an area zoned subsequent to the construction of the facilities may add to, alter, expand, or change the facilities upon that land or upon lands immediately adjacent thereto without regard to the zoning regulation for the area, if the board of commissioners deems the action necessary for the proper operation of an electric project.

History. Acts 2003, No. 366, § 1.

25-20-414. Tax-exempt status of property owners and income.

(a) Each authority created under this subchapter will be performing public functions and will be a public instrumentality of the participating municipal electric utilities.

(b) Accordingly, all properties at any time owned by the authority and the income from the properties, shall be exempt from all taxation in the State of Arkansas.

History. Acts 2003, No. 366, § 1.

25-20-415. Immunity.

(a) This subchapter does not abrogate or in any other manner affect the immunity under existing law of the participating municipal electric utilities.

(b) The immunity shall extend also to any authority created under this subchapter and to each commissioner, officer, and employee thereof.

History. Acts 2003, No. 366, § 1.

25-20-416. No public utility status.

No authority created under this subchapter shall be a:

(1) "Public utility" within the meaning of either §§ 14-200-101 — 14-200-105 or §§ 23-1-101 — 23-4-509; or

(2) "Person, company, or corporation that has secured a franchise from any municipality" within the meaning of § 14-200-102.

History. Acts 2003, No. 366, § 1.

25-20-417. Annual report and audit.

(a) During each calendar year, each authority shall make a public, written report to the governing bodies of the municipal electric utilities concerning its activities for the preceding calendar year.

(b) Each report shall set forth a complete operating and financial statement covering its operation during the year, including, without limitation, an audit of the authority's revenues and expenses performed by an independent certified public accountant.

History. Acts 2003, No. 366, § 1.

25-20-418. Provisions supplemental and controlling.

This subchapter shall be deemed to provide an additional and alternative method for the doing of the things authorized in this subchapter and shall be regarded as supplemental and additional to powers conferred by other laws.

History. Acts 2003, No. 366, § 1.

25-20-419. Construction.

(a)(1) This subchapter shall be liberally construed to accomplish its intent and purposes and shall be the sole authority required for the accomplishment of its purposes, and to this end it shall not be necessary to comply with the provisions of other laws relating to the issuance and sale of the bonds authorized by this subchapter.

(2) This subchapter shall be construed as an additional and alternative method for the issuance and sale of bonds.

(b) An authority shall not be subject to Arkansas Public Service Commission regulatory authority.

History. Acts 2003, No. 366, § 1; 2007, No. 475, § 4.

25-20-420. Use of revenue.

This subchapter does not modify the existing right of a governing body of a municipal electric utility to use available funds generated by its electric utility operations for other municipal purposes.

History. Acts 2003, No. 366, § 1.

25-20-421. Effect of other laws.

The provisions of any other law, except as expressly provided in this subchapter or in the other law by way of express reference to this subchapter, shall not limit or restrict the operation of this subchapter in any manner.

History. Acts 2003, No. 366, § 1.

25-20-422. [Repealed.]

Publisher's Notes. This section, concerning reliability rules and transmission upgrades, was repealed by Acts 2007, No. 475, § 5. The section was derived from Acts 2003, No. 366, § 1.

25-20-423. Termination or dissolution.

The governing bodies of the municipal electric utility forming an authority shall include in their interlocal agreement a provision allowing for:

- (1) The termination or dissolution of the authority;
- (2) The winding up of the authority's affairs; and
- (3) Appropriate disposal or distribution of the authority's property.

History. Acts 2003, No. 366, § 1.

25-20-424. Control of electric transmission facilities.

(a) An authority created pursuant to this subchapter shall be authorized to and shall join or contract for the control of its electric transmission facilities with an independent transmission system operator, independent transmission company, regional transmission organization, or other independent transmission entity approved by the Federal Energy Regulatory Commission for this state or a larger region of which this state is a part as, if, and when other similarly situated electric transmission systems are so required to join or contract.

(b) However, any authority established under this subchapter shall be authorized to and shall join the appropriate reliability council responsible for operations in its geographic area as appropriate.

History. Acts 2003, No. 366, § 1.

25-20-425. Sham transactions prohibited.

(a) An authority created pursuant to this subchapter shall be prohibited from engaging in any sham transaction.

(b) For the purposes of this section, a “sham transaction” means the acquisition or construction of an electric project authorized by this subchapter for the purpose of:

(1) A subsequent sale or transfer of the electric project to any municipal electric utility, public utility, or other person engaged in the selling or distributing of electricity to consumers other than a municipal electric utility, public utility, or other person engaged in selling or distributing electricity to consumers that was selling or distributing electricity to consumers on July 16, 2003; or

(2) Providing electric service directly to an end user.

History. Acts 2003, No. 366, § 1.

SUBCHAPTER 5 — CONSOLIDATED WASTEWATER SYSTEMS

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SECTION.

25-20-524. Property of public body.

25-20-501. Title.

This subchapter may be referred to and cited as the “Consolidated Wastewater Systems Act”.

History. Acts 2009, No. 1371, § 1.

25-20-502. Creation.

(a) Any two (2) or more public agencies entering into an interlocal agreement under § 25-20-101 et seq. for the purpose of consolidating wastewater systems may create a public body corporate and politic as a separate legal entity for the purpose of constructing, owning, managing, operating, financing, mortgaging, granting security interests in, improving, extending, acquiring, reconstructing, equipping, selling, leasing, contracting concerning, dealing in, disposing of, and maintaining a consolidated wastewater system.

(b) The governing body of each public agency wishing to create a public body under this subchapter shall approve by ordinance or resolution or otherwise the filing of an application with the Secretary of State to create a public body under this subchapter and approve an interlocal agreement specifying the matters set forth in § 25-20-104. The interlocal agreement shall:

(1) Specify limitations on the exercise of the public body’s powers, including without limitation matters in which the participating public agencies reserve rights to approve, disapprove, or otherwise participate in any exercise of the public body’s powers;

(2) Provide for reasonable franchise fees, payments in lieu of taxes, or other payments by the public body to the participating public agencies as the public agencies find appropriate;

(3) Specify the number of commissioners of the public body, the terms of office of the commissioners, the manner of appointing or electing the commissioners, the residency requirements, if any, applicable to commissioners in addition to those set forth in this subchapter, and the voting rights of each commissioner, which voting rights may vary by commissioner; and

(4) Set forth other matters consistent with this subchapter concerning the creation and operation of the public body as the participating public agencies find necessary or appropriate.

(c)(1) An application to create a public body under this subchapter shall set forth:

(A) A request that a public body corporate and politic be created under this subchapter;

(B) The proposed name for the public body;

(C) The names of the participating public agencies;

(D) The number of commissioners of the public body;

(E) The manner in which commissioners of the public body will be appointed or elected and the residency requirements, if any, applicable to commissioners in addition to those set forth in this subchapter;

(F) The voting rights of each commissioner;

(G) Special procedures for amending the certificate of incorporation, if any; and

(H) Other matters consistent with this subchapter concerning the creation and operation of the public body as the participating public agencies find necessary or appropriate.

(2) The application shall be signed on behalf of each participating public agency by an authorized official of the public agency.

(d)(1) The Secretary of State shall examine the application, and if the Secretary of State finds that the name proposed for the public body is not identical with that of any other corporation, agency, or instrumentality of this state, so nearly similar as to lead to confusion and uncertainty, or otherwise deceptively misleading, the Secretary of State shall:

(A) Receive and file the application;

(B) Record the application in an appropriate book of record in his or her office;

(C) Make and issue a certificate of incorporation under the seal of the state setting forth the name of the public body and the names of the participating public agencies; and

(D) Record the certificate in an appropriate book of record in his or her office.

(2) A copy of the certificate of incorporation certified by the Secretary of State shall be admissible in evidence in any suit, action, or proceeding involving the validity or enforcement of or relating to any contract of the public body and shall be conclusive proof of the filing and contents of the certificate and the effective creation of the public body under this subchapter, absent fraud in the premises being established.

(e)(1) Any certificate of incorporation issued by the Secretary of State under this subchapter may be amended from time to time in the manner provided in the certificate of incorporation then existing or, if the certificate of incorporation does not specify a procedure for its amendment, with the consent of a majority of the commissioners of the public body who are entitled to vote.

(2)(A) The amendment shall be signed by an officer or other authorized person of the public body, who shall certify that the certificate of incorporation has been amended in accordance with this subchapter and, as applicable, in the manner prescribed in the then-existing certificate of incorporation.

(B) On the filing of the amendment with the Secretary of State under this section, the Secretary of State shall make and issue an amendment to the certificate of incorporation.

25-20-503. Contributions of public agency properties.

(a) Participating public agencies are authorized to contribute to a public body created under this subchapter such real and personal property of the participating public agencies as the participating public agencies find necessary or appropriate to the ownership and operation of a consolidated wastewater system by the public body, provided that:

(1) Any contributions of reserve funds held in trust under § 14-73-101 et seq. shall be made on the condition that the funds may be used only for the purposes described in the trust agreement and until so used shall remain in a trust fund that complies with the requirements of § 14-73-101 et seq.; and

(2) Any contribution of sales or use tax proceeds held or to be collected by participating public agencies for wastewater uses shall be used only for the uses designated in the ordinance providing for the approval of those funds.

(b) Contributions of properties under this section shall be on the terms and conditions and for consideration as the participating public agencies find just and proper, it being within the participating public agencies' discretion to contribute property with or without monetary consideration.

(c) Participating public agencies may execute contracts, leases, deeds, bills of sale, easements, assignments, and other instruments of conveyance as may be required or convenient to exercise the powers granted in this section.

History. Acts 2009, No. 1371, § 1.

25-20-504. Board of commissioners.

(a)(1) Each public body created under this subchapter shall have a board of commissioners consisting of at least three (3) commissioners, with each commissioner residing within the jurisdiction of one (1) of the participating public agencies and otherwise meeting any residency requirements under the public body's certificate of incorporation.

(2) Each commissioner shall be appointed or elected in the manner set forth in the public body's certificate of incorporation and shall serve a term of office as specified in the interlocal agreement.

(b) The commissioners shall not receive compensation for their services but shall be entitled to reimbursement of expenses incurred in the performance of their duties.

(c) Before entering upon their duties, the commissioners shall take and file with the Secretary of State an oath of office swearing to discharge faithfully their duties in the manner provided by law.

(d)(1)(A) The board of commissioners shall meet and organize by electing one (1) of their number as chair, one (1) as vice chair, one (1) as secretary, and one (1) as treasurer.

(B) Officers shall be elected annually thereafter in like manner.

(2) The duties of secretary and treasurer may be performed by the same commissioner.

(3)(A) The secretary may cause copies to be made of all minutes and other records and documents of the public body.

(B) The secretary may certify under the official seal of the public body that the copies are true copies, and persons dealing with the public body may rely upon the certification.

History. Acts 2009, No. 1371, § 1.

25-20-505. Powers and duties of board of commissioners.

(a) All powers, business, and affairs of any public body under this subchapter shall be exercised and managed under the direction of its board of commissioners, subject to any limitation under the public body's certificate of incorporation or interlocal agreement.

(b) The duties of the board of commissioners include without limitation:

(1) Appointing a chief executive officer, who shall not be a member of the board of commissioners, and setting compensation and other terms of employment for such officer;

(2) Approving all budgets of the public entity;

(3) Adopting rules and by-laws that the board of commissioners find necessary and expedient for the proper ownership and operation of the consolidated wastewater system, including adopting such rules and by-laws as the commissioners find necessary and expedient regarding the discharge by any person or entity of any wastewater into the consolidated wastewater system, and altering, changing, or amending the rules and by-laws at its discretion; and

(4) Performing other duties under the interlocal agreement.

History. Acts 2009, No. 1371, § 1.

25-20-506. General powers of public body.

(a) In addition to other powers under this subchapter and unless the certificate of incorporation or interlocal agreement provides otherwise, each public body under this subchapter shall have the power to:

(1) Have perpetual succession as a body politic and corporate;

(2) Maintain offices it finds appropriate;

(3) Execute and perform contracts;

(4) Sue and be sued;

(5) Apply for and receive permits, licenses, certificates, and approvals as may be necessary and own and operate facilities in accordance therewith;

(6) Employ the services of all personnel necessary to its operations and, in connection therewith, adopt and implement such healthcare, disability, bonus, retirement, and other employee benefit plans as the board of commissioners find appropriate;

(7) Employ the services of professionals;

(8) Purchase insurance, maintain reserves for self-insurance, and become self-insured for the payment of workers' compensation under

§ 11-9-404(a)(2), provided that the deposit of an indemnity bond, letter of credit, or securities shall not be required;

(9) Purchase, receive, own, hold, improve, use, lease, sell, convey, exchange, transfer, assign, mortgage, pledge, and otherwise acquire, dispose of, and deal with real and personal property and any legal or equitable interest therein in its own name;

(10) Apply for, receive, and use loans, grants, taxes, donations, and contributions from any public agency or other lawful source, including any proceeds from the sale of bonds;

(11) Borrow money on a secured or unsecured basis, and in connection therewith issue bonds, promissory notes, or other evidence of indebtedness, and make and deliver indentures, mortgages, pledges, security agreements, financing statements, and other instruments encumbering assets of the public body;

(12) Pay reasonable franchise fees, make payments in lieu of taxes, or otherwise make payments to the participating public agencies in such amounts as may be required or permitted by the participating public agencies;

(13) Exercise such other powers, privileges, and authorities as the participating public agencies have delegated to the public body by the public agency interlocal agreement, subject to any restrictions imposed thereon by the interlocal agreement or applicable law; and

(14) Have such other and further powers relating to the ownership and operation of wastewater systems as are now by law given to the governing body of any participating public agency and do all other acts and things necessary, convenient, or desirable to carry out the purposes of and to exercise the powers granted to the public body by this subchapter.

(b) A public body created under this subchapter shall constitute a separate legal entity, but to the extent provided by state law or set forth in the certificate of incorporation of the public body or the interlocal agreement of the participating public agencies, shall be subject to the further supervision or regulation or require the further approval or consent of any participating public agency.

History. Acts 2009, No. 1371, § 1; substituted “the public agency interlocal agreement” for “their interlocal agreement” in (a)(13).
2011, No. 1122, § 4.

Amendments. The 2011 amendment

25-20-507. Operation of consolidated wastewater system.

(a) “Consolidated wastewater system” means and includes a wastewater and collection system in its entirety, or any integral part thereof, including land, mains, interceptors, collector lines, manholes, force mains, valves, pumping stations, pumps, treatment and pretreatment plants and units thereof, as well as all other real and personal property, buildings, structures, or other improvements or facilities as may be necessary or advisable for the proper and efficient operation of the public body’s facilities.

(b) Unless the interlocal agreement provides otherwise, a public body under this subchapter shall have full authority to construct, own, manage, operate, finance, improve, extend, acquire, reconstruct, equip, sell, lease, contract concerning, deal in, dispose of, and maintain a consolidated wastewater system. The assets of the public body may be located inside and outside the jurisdictions of the public body's participating public agencies.

(c)(1) Unless the interlocal agreement provides otherwise, a public body under this subchapter shall have full authority to fix, charge, and collect and from time to time change the rates or charges for the use of and the service rendered by the consolidated wastewater system and other goods and services provided by the public body.

(2) A public body shall have a reasonable time after its creation or after its expansion by the addition of a new participating public agency to equalize any differentials in sewer rates or charges among similarly situated classes of customers.

(3) It shall be a complete defense to any suit or claim based on the charging of differential rates or charges for similarly situated classes of customers that:

(A) Within one (1) year of the creation or expansion of the public body, an independent expert completes a study of rates or charges charged to customers that shows a differential in rates or charges among similarly situated classes of customers located within the jurisdictions of the participating public agencies, and the public body equalizes rates or charges among similarly situated classes of customers within ten (10) years of the date of the rate study; or

(B)(i) Within one (1) year of the creation or expansion of the public body, an independent expert completes an engineering study of the consolidated wastewater system infrastructure located within the jurisdiction or jurisdictions of the participating public agencies that identifies improvements needed to create a uniform infrastructure quality throughout the jurisdictions, rate differentials among otherwise similarly situated classes of customers are reasonably calculated to recover from customers located in the jurisdictions in which the improvements are made the costs incurred in making the improvements, and the public body equalizes rates or charges among similarly situated classes of customers within ten (10) years of the date of the engineering study.

(ii) The inability of a public body to rely upon either safe harbor defense under subdivisions (c)(3)(A) and (c)(3)(B)(i) of this section shall not create any implication that the public body has failed to equalize any differentials in wastewater rates or charges among similarly situated classes of customers within a reasonable period of time after its creation or expansion.

(d) If any rate or charge established is not paid within thirty (30) days after it is due, the amount of the rate or charge together with a penalty of ten percent (10%) and a reasonable attorney's fee may be:

(1) Charged by the public body; and

(2) Recovered by the public body in a suit filed in the circuit court where any part of the consolidated wastewater system is located.

History. Acts 2009, No. 1371, § 1.

25-20-508. Out-of-area sales and services.

(a) A public body under this subchapter may extend its collection system and provide wastewater services to any customer located outside the jurisdictions of the public body's participating public agencies.

(b) Use of the consolidated wastewater system and extensions of services under this section may be made at such rates and charges and on such other terms as the board of commissioners finds just and reasonable, and the rates and charges need not be the same as the rates and charges charged customers within the jurisdictions of the public body's participating public agencies.

History. Acts 2009, No. 1371, § 1.

25-20-509. Eminent domain.

(a) A public body under this subchapter may acquire by the exercise of the power of eminent domain any real property, rights, easements, franchises, and other property that it finds necessary for its purposes under § 18-15-301 et seq. or § 18-15-401 et seq. or in the manner provided by law under which one (1) of the public body's participating public agencies may exercise a power of eminent domain.

(b) In exercising the power of eminent domain, a public body shall have the right by its agents or employees to peacefully enter upon any lands, structures, or rights-of-way to make surveys, tests, and measurements thereon but is liable for any damage that may result by reason of its actions.

History. Acts 2009, No. 1371, § 1.

25-20-510. Improvements — Financing with bonds.

(a) If a public body under this subchapter owns or operates a consolidated wastewater system and desires to construct improvements, betterments, and extensions thereto, it may issue revenue bonds under this section for the payment thereof.

(b) The issuance of bonds shall be authorized by resolution of the board of commissioners.

(c) The bonds may be issued as registered bonds and may be exchangeable for bonds of another denomination or in another form.

(d) The bonds may be in such form and denominations, may have such date or dates, may be stated to mature at such time or times, may bear interest payable at such times and at such rate or rates, may be payable at such places within or without the state, may be subject to such terms of redemption in advance of maturity at such prices, and

may contain such terms and conditions as the board of commissioners determines.

(e) The bonds shall have all the qualities of and shall be negotiable instruments under the laws of the State of Arkansas, subject to provisions as to registration under this section.

(f) The authorizing resolution may contain other terms, covenants, and conditions that the board of commissioners finds reasonable and desirable, including without limitation conditions concerning the maintenance of various funds and reserves, the nature and extent of any security for payment of the bonds, the custody and application of the proceeds of the bonds, the collection and disposition of revenues, the investing for authorized purposes, and the rights, duties, and obligations of the public body and the holders and registered owners of the bonds.

(g)(1) The authorizing resolution may provide for the execution of a trust indenture between the public body and any financial institution within or without the State of Arkansas.

(2) The trust indenture may contain any terms, covenants, and conditions found desirable by the board of commissioners, including without limitation conditions concerning the maintenance of various funds and reserves, the nature and extent of any security for the payment of the bonds, the custody and application of the proceeds of the bonds, the collection and disposition of revenues, the investing and reinvesting of any moneys during periods not needed for authorized purposes, and the rights, duties, and obligations of the public body and the holders and registered owners of the bonds.

(h) An authorizing resolution and trust indenture relating to the issuance and security of the bonds shall constitute a contract between the public body and holders and registered owners of the bonds, which contract and all covenants, agreements, and obligations therein shall be promptly performed in strict compliance with the terms and provisions of the contract, and the covenants, agreements, and obligations of the public body may be enforced by mandamus or other appropriate proceeding in a court of proper jurisdiction.

(i)(1) The resolution shall fix the minimum rate or rates for the use of and the service rendered by the consolidated wastewater system to be collected prior to the payment of all of the bonds, with exceptions as may be provided in the resolution, and shall pledge the revenues derived from the consolidated wastewater system or any specified portion of the consolidated wastewater system for the purpose of paying the bonds and interest thereon.

(2) The rates to be charged for the services of the consolidated wastewater system or the specified portion of the consolidated wastewater system with revenues pledged to the payment of the bonds shall be sufficient to provide for the payment of all principal of and interest on all bonds when due, to provide for the operation and maintenance of the consolidated wastewater system or the specified portion of the consolidated wastewater system with revenues pledged to the payment

of the bonds, and to provide an adequate depreciation account for the consolidated wastewater system or the specified portion of the consolidated wastewater system with revenues pledged to the payment of the bonds.

(j)(1) The proceeds derived from the sale of the bonds shall be used solely for the purpose of making betterments, improvements, and extensions to the consolidated wastewater system owned and operated by the public body, paying interest on the bonds during the period of construction of the betterments, improvements, and extensions, establishing any necessary reserves for the bonds, paying the costs of issuing the bonds, and paying any other costs and expenditures of whatever nature incidental to the accomplishment of the betterments, improvements, and extensions.

(2) The terms "betterments", "improvements", and "extensions" include a wastewater and collection system, including land, mains, interceptors, collector lines, manholes, force mains, valves, pumping stations, pumps, treatment and pretreatment plants and units thereof, as well as all other real and personal property, buildings, structures, or other improvements or facilities that may be necessary or advisable for the proper and efficient operation of the public body's consolidated wastewater system.

(k)(1) Bonds issued under this section shall be payable solely from revenues derived from the consolidated wastewater system or any specified portion of the consolidated wastewater system.

(2) The bonds shall not constitute in any event an indebtedness of nor pledge the faith and credit of the State of Arkansas or the participating public agencies within the meaning of any constitutional provisions or limitations.

(3) It shall be stated plainly on the face of each bond that:

(i) It is issued under this subchapter;

(ii) It does not constitute an indebtedness of the State of Arkansas or the participating public agencies within any constitutional provisions or limitations; and

(iii) It is not backed by the full faith and credit of the State of Arkansas or the participating public agencies.

(4) The bonds and the interest thereon shall be exempt from all state, county, and municipal taxation, including income taxation and inheritance taxation.

(l)(1) The bonds may be sold in such manner, either at public or private sale, and upon such terms as the board of commissioners finds reasonable and expedient for effectuating the purposes of the public body.

(2) The bonds shall be sold at a price the board of commissioners accepts, including sale at discount.

(m)(1) The bonds shall be executed by manual or facsimile signature of the chair of the board of commissioners and the manual or facsimile signature of the secretary of the board of commissioners or any other officer of the public body authorized to do so by resolution of the board of commissioners.

(2) In case any of the officers whose signatures appear on the bonds cease to be such officers before delivery of the bonds, their signatures shall be valid and sufficient for all purposes.

(3) Each bond shall be impressed or imprinted with the seal of the public body.

History. Acts 2009, No. 1371, § 1; 2011, No. 1122, § 5.

Amendments. The 2011 amendment subdivided (k)(3).

25-20-511. Lien in favor of bondholders.

(a) The payment of the principal of bonds issued under this subchapter and the interest thereon may be secured by a lien on and security interest in the consolidated wastewater system or any specified portion of the consolidated wastewater system.

(b) It shall not be necessary to the perfection of the lien and pledge for such purposes that the trustee in connection with such bond issue or the holders of the bonds take possession of the collateral security.

(c) Subject to whatever restrictions may be contained in the resolution or indenture governing the bonds, any holder of bonds issued under this subchapter may enforce in a court of proper jurisdiction the mortgage lien and may compel the performance of the duties of the officers of the issuing public body under this subchapter.

(d) If there is default in the payment of the principal of or interest on any of the bonds, a court of proper jurisdiction may appoint a receiver to administer the consolidated wastewater system or the specified portion of the consolidated wastewater system pledged to the payment of the bonds on behalf of the public body with power to charge and collect rates sufficient to provide for the payment of the bonds and interest thereon and for the payment of the operating expenses, and to apply the income and revenues under this subchapter and the resolution or indenture providing for the issuance of the bonds.

History. Acts 2009, No. 1371, § 1.

25-20-512. Refunding bonds.

(a) Bonds may be issued for the purpose of refunding any obligations issued under this subchapter or otherwise. Such refunding bonds may be combined with bonds issued under § 25-20-510 into a single issue.

(b) When bonds are issued under this section for refunding purposes, the bonds may either be sold or delivered in exchange for the outstanding obligations. If sold, the proceeds may be applied to the payment of the obligations refunded or deposited into escrow for the retirement thereof either at maturity or upon any authorized redemption date.

(c)(1) All bonds issued under this section shall be authorized, issued, and secured in the manner provided for other bonds issued under this subchapter and shall have all the attributes of such bonds.

(2) The resolution or indenture under which the refunding bonds are issued may provide that any of the refunding bonds shall have the same

priority of lien on the revenues pledged for their payment as was enjoyed by the obligations refunded thereby.

History. Acts 2009, No. 1371, § 1.

25-20-513. Securing deposit of public funds.

Bonds issued under this subchapter shall be eligible to secure the deposit of public funds.

History. Acts 2009, No. 1371, § 1.

25-20-514. No personal liability.

A commissioner or officer of the public body shall not be liable personally for any reason arising from the issuance of bonds under this subchapter unless he or she acted with a corrupt intent.

History. Acts 2009, No. 1371, § 1.

25-20-515. Sewer payments by public agencies.

The public agencies shall be subject to the same rates and charges established by the public body for services rendered to the public agencies and shall pay the rates and charges when due.

History. Acts 2009, No. 1371, § 1.

25-20-516. Zoning exemption.

A public body maintaining facilities in an area zoned after the construction of the facilities may add to, alter, expand, or change the facilities upon that land or upon lands immediately adjacent thereto without regard to the zoning regulation for the area if the board of commissioners finds the action necessary for the proper operation of its consolidated wastewater system.

History. Acts 2009, No. 1371, § 1.

25-20-517. Tax-exempt status of property owned and income.

Each public body under this subchapter is performing functions as and is a public instrumentality of the participating public agencies, and all properties at any time owned by the public body and the income therefrom shall be exempt from all taxation in the state.

History. Acts 2009, No. 1371, § 1.

25-20-518. Immunity.

(a) This subchapter does not affect the immunity of the participating public agencies.

(b) Immunity extends to any public body created under this subchapter and to each commissioner, officer, and employee thereof.

History. Acts 2009, No. 1371, § 1.

25-20-519. Franchise fees.

(a) A participating public agency that is an Arkansas municipality or county, acting by ordinance or resolution of its governing body, may require a public body under this subchapter to pay a reasonable franchise fee by which the public body may be permitted to occupy the streets, highways, or other public places within the jurisdiction of such public agency, and the ordinance or resolution is prima facie reasonable, provided that a franchise fee shall not exceed ten percent (10%) of the public body's operating revenues that are attributable to gross income from wastewater services within the public agency's jurisdiction unless agreed to by the public body or approved by the voters of the public agency.

(b) A public body created under this subchapter is not a public utility under § 14-200-101 et seq. or a person, company, or corporation that has secured a franchise from any municipality under § 14-200-102.

(c) Any franchise fees charged under this section shall be in addition to payments in lieu of taxes permitted under this subchapter.

History. Acts 2009, No. 1371, § 1.

25-20-520. Payments in lieu of taxes.

(a) A public body under this subchapter shall make annual payments to the general fund of each participating public agency that is an Arkansas municipality or county in lieu of taxes in return for police, fire, and health protection and in return for administrative and other services furnished by the public agency.

(b) The payments shall be an operation and maintenance expense of the public body.

(c)(1) In each calendar year, the payments shall equal the amount the public agency would have received from the public body as real property taxes for the preceding calendar year if the public body's real property located in the public agency's jurisdiction, whether owned or leased by the public body, had been privately owned and subject to tax by the public agency.

(2) For purposes of this computation, the public body's real property shall be deemed to have an assessed value equal to twenty percent (20%) of book value as reflected by the public body's usual accounting procedures.

(d) Payments in lieu of taxes under this section shall be in addition to any franchise fees permitted under this subchapter.

History. Acts 2009, No. 1371, § 1.

25-20-521. Annual report and audit.

(a) Within the first ninety (90) days of each calendar year, each public body under this subchapter shall make a written report to the governing bodies of the participating public agencies concerning its activities for the preceding calendar year.

(b) Each report shall set forth a complete operating and financial statement covering its operation during the year, including without limitation an audit of the public body's revenues and expenses performed by an independent certified public accountant.

History. Acts 2009, No. 1371, § 1.

25-20-522. Provisions supplemental and controlling.

This subchapter provides an additional and alternative method for the doing of the things authorized hereby and is supplemental and additional to powers conferred by other laws.

History. Acts 2009, No. 1371, § 1.

25-20-523. Construction.

This subchapter shall be liberally construed to accomplish its intent and purposes and shall be the sole authority required for the accomplishment of its purposes, and to this end it shall not be necessary to comply with the provisions of other laws relating to the issuance and sale of the bonds authorized by this subchapter, and this subchapter shall be construed as an additional and alternative method for the issuance and sale of bonds.

History. Acts 2009, No. 1371, § 1.

25-20-524. Property of public body.

(a) Regardless of the beginning date thereof, adverse possession or adverse use of lands or easements owned by a public body created hereunder shall not ripen into title or permanent right.

(b) This section shall have no application to any possession or use which ripened into title or permanent right before the enactment of this section.

History. Acts 2009, No. 1371, § 1.

CHAPTER 24**MARTIN LUTHER KING, JR. COMMISSION****SECTION.**

25-24-101. Creation — Members.

25-24-102. Duties.

SECTION.

25-24-103. Staff of commission.

Effective Dates. Acts 2009, No. 309, § 5: July 1, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the Martin Luther King, Jr. Commission serves an important and valuable role in this state, that the commission requires restructuring to fulfill its func-

tions and advance its goals, and that the ideal time to commence this restructuring is at the beginning of the state's fiscal year. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2009."

25-24-101. Creation — Members.

(a) There is hereby created a commission to be known as the "Martin Luther King, Jr. Commission".

(b) The commission shall consist of thirteen (13) members as follows:
(1)(A) Five (5) members appointed by the Governor.

(B) The Governor shall appoint one (1) member from each congressional district;

(2)(A) Four (4) members appointed by the President Pro Tempore of the Senate.

(B) The President Pro Tempore of the Senate shall appoint one (1) member from each congressional district; and

(3)(A) Four (4) members appointed by the Speaker of the House of Representatives.

(B) The Speaker of the House of Representatives shall appoint one (1) member from each congressional district.

(c)(1) Of the initial appointments by the Governor:

(A) One (1) member shall serve a term of one (1) year;

(B) One (1) member shall serve a term of two (2) years;

(C) One (1) member shall serve a term of three (3) years; and

(D) Two (2) members shall serve terms of four (4) years;

(2) Of the initial appointments by the President Pro Tempore of the Senate:

(A) One (1) member shall serve a term of one (1) year;

(B) One (1) member shall serve a term of two (2) years;

(C) One (1) member shall serve a term of three (3) years; and

(D) One (1) member shall serve a term of four (4) years.

(3) Of the initial appointments by the Speaker of the House of Representatives:

(A) One (1) member shall serve a term of one (1) year;

(B) One (1) member shall serve a term of two (2) years;

(C) One (1) member shall serve a term of three (3) years; and

(D) One (1) member shall serve a term of four (4) years.

(4) The appointing authority shall determine the lengths of terms of his or her initial appointees.

(5) Except as provided in subsection (e) of this section, all succeeding appointments shall be for terms of four (4) years.

(6) The Governor shall select annually a chair from the membership of the commission.

(d)(1) Except as provided in subdivision (d)(2) of this section, no member of the commission subject to a term limit shall serve more than two (2) terms.

(2) Upon the conclusion of his or her initial appointment, an initial appointee to the commission subject to a term limit shall serve no more than two (2) additional terms.

(e) Vacancies in the membership of the commission shall be filled for the balance of the unexpired term by the appointing authority.

(f)(1) Members of the commission shall be subject to removal from office by the appointing authority when the actions or condition of a member shall be considered as good cause for removal.

(2) "Good cause" means the same as defined in § 25-16-804.

(g) A majority of the commission shall constitute a quorum for the transaction of business.

(h) Members of the commission shall serve without compensation but may receive expense reimbursement in accordance with § 25-16-901 et seq.

History. Acts 1993, No. 1216, § 1; 1997, No. 250, § 242; 1997, No. 968, § 1; 2001, No. 1288, § 24; 2009, No. 309, § 1. **Amendments.** The 2009 amendment rewrote the section.

25-24-102. Duties.

The Martin Luther King, Jr. Commission shall have the following duties:

(1) To promote racial harmony, understanding, respect, and goodwill among all citizens;

(2) To promote principles of nonviolence, peace, and social justice;

(3) To promote among the people of Arkansas, by appropriate activities, both awareness and appreciation of the civil rights movement and advocacy of the principles and legacy of Martin Luther King, Jr.;

(4) To develop, coordinate, and advise the Governor and the General Assembly of appropriate ceremonies and activities throughout the state relating to the observance of Martin Luther King, Jr.'s birthday, including without limitation providing advice and assistance to local governments and private organizations with respect to the observance of Martin Luther King, Jr.'s birthday;

(5) To receive donations and contributions from individuals and public and private organizations in order to carry out its responsibilities;

(6)(A) To establish a Martin Luther King, Jr. Youth Commission to educate young persons on the principles and legacy of Martin Luther King, Jr.

(B) Members of the Martin Luther King, Jr. Youth Commission may receive expense reimbursement in accordance with § 25-16-901 et seq.; and

(7) To enable the people of Arkansas to reflect on the life and teachings of Martin Luther King, Jr. through educational endeavors,

cultural performances, exhibitions, and events that are multiethnic and family oriented.

History. Acts 1993, No. 1216, § 2; 2009, No. 309, § 2. inserted “including without limitation ... Martin Luther King, Jr.’s birthday” in (4); added (6) and (7); and made related changes.

Amendments. The 2009 amendment inserted “peace, and social justice” in (2);

25-24-103. Staff of commission.

(a)(1) The Governor shall appoint an executive director of the Martin Luther King, Jr. Commission.

(2) The executive director shall serve at the pleasure of the Governor.

(b) The commission may employ staff and consultants as authorized by law and fix their compensation, duties, authority, and responsibilities.

History. Acts 1993, No. 1216, § 3; 2009, No. 309, § 3. inserted (a), redesignated the remaining text accordingly, and made a minor stylistic change.

Amendments. The 2009 amendment

CHAPTER 26

INFORMATION TECHNOLOGY

SUBCHAPTER.

2. INFORMATION TECHNOLOGY ACCESS FOR THE BLIND.

SUBCHAPTER 2 — INFORMATION TECHNOLOGY ACCESS FOR THE BLIND

SECTION.

25-26-201. Findings and policy.

25-26-202. Definitions.

25-26-203. Assurance of nonvisual access.

SECTION.

25-26-204. Procurement requirements.

25-26-205. Implementation.

A.C.R.C. Notes. Acts 2013, No. 308, § 6, provided: “This act applies retroactively to the following:

“(1) Information technology procured on or after July 30, 1999; and

“(2) Any upgrades or modifications to or replacement of information technology procured on or after July 30, 1999.”

Effective Dates. Acts 2013, No. 308, § 8: Mar. 11, 2013. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that because of current limitations in the commercial availability of information technology supporting accessibility for the blind or visually impaired, the strict limitations of Act 1227 of 1999 have unreason-

ably hindered or delayed the acquisition of information technology, which has resulted in an undue burden on state agencies; and that this act is immediately necessary because the efficient installation, upgrading, and modification of information technology is essential to the functioning of the state. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is

vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

25-26-201. Findings and policy.

(a) The General Assembly finds that:

(1) The advent of the information age throughout the United States and around the world has resulted in lasting changes in information technology;

(2) Use of interactive visual display devices by state and state-assisted organizations has become a widespread means of access for employees and the public to obtain information available electronically, but nonvisual access by speech, braille, or other appropriate means has been overlooked in the development of the latest information technology;

(3) Presentation of electronic data solely in a visual format is a barrier to access by individuals who are blind or visually impaired, preventing them from participating on equal terms in crucial areas of life such as education and employment;

(4) Alternatives, including both software and hardware adaptations, have been created so that interactive control of computers and use of the information presented is more likely to be available by both visual and nonvisual means; and

(5) The goals of the state in obtaining and deploying the most advanced forms of information technology properly include universal access so that segments of society with particular needs, including without limitation individuals unable to use visual displays, will not be left out of the information age.

(b) It is the policy of the State of Arkansas that all programs and activities that are supported in whole or in part by public funds shall be conducted in accordance with the following principles:

(1) To the extent provided in this subchapter, individuals who are blind or visually impaired shall be provided access to the advanced technology that is provided to other employees, program participants, and members of the general public;

(2) To the extent provided in this subchapter, technology purchased in whole or in part with funds provided by the state to be used for the creation, storage, retrieval, or dissemination of information and intended for use by employees, program participants, and members of the general public shall be accessible to and usable by individuals who are blind or visually impaired; and

(3) If technology that allows access for individuals who are blind or visually impaired is not reasonably available, individuals who are blind or visually impaired shall be provided a reasonable accommodation as defined in 42 U.S.C. § 12111(9), as it existed on January 1, 2013.

History. Acts 1999, No. 1227, § 1; 2013, No. 308, § 1.

Amendments. The 2013 amendment, in (a)(2), substituted “devices” for “terminals,” “has become” for “is becoming” and “the deployment of” for “purchasing and deploying” and deleted “whether” follow-

ing “nonvisual access”; substituted “more likely to be available” for “possible” in (a)(4); substituted “without limitation” for “but not limited to” in (a)(5); rewrote (b)(1); added “To the extent provided in this subchapter” at the beginning of (b)(2); and added (b)(3).

25-26-202. Definitions.

For purposes of this subchapter:

(1) “Access” means the ability to receive, use, and manipulate data and operate controls included in information technology;

(2) “Blind or visually impaired individual” means an individual who:

(A) Has a visual acuity of twenty/two hundred (20/200) or less in the better eye with correcting lenses or has a limited field of vision so that the widest diameter of the visual field subtends an angle no greater than twenty (20) degrees;

(B) Has a medically indicated expectation of visual deterioration; or

(C) Has a medically diagnosed limitation in visual functioning that restricts the individual’s ability to read and write standard print at levels expected of individuals of comparable ability;

(3) “Covered entity” means the state or any state-assisted organization;

(4) “Information technology” means all electronic information processing hardware and software, including telecommunications;

(5) “Nonvisual” means synthesized speech, braille, and other output methods not requiring sight;

(6) “Reasonably available” means developed and available for purchase for a price as provided in this subchapter from:

(A) The vendor that provided the product that is to be used by visual users; or

(B) Another vendor if the technology is available from more than one (1) vendor in the marketplace;

(7) “State” means the state or any of its departments, agencies, public bodies, or other instrumentalities;

(8) “State-assisted organization” means a college, nonprofit organization, person, political subdivision, school system, or other entity supported in whole or in part by state funds; and

(9) “Telecommunications” means the transmission of information, images, pictures, voice or data by radio, video, or other electronic or impulse means.

History. Acts 1999, No. 1227, § 2; 2013, No. 308, § 2.

Amendments. The 2013 amendment

added (6) and redesignated the following subdivisions accordingly.

25-26-203. Assurance of nonvisual access.

In general, the head of each covered entity shall ensure that information technology equipment and software used by employees, program participants, or members of the general public:

(a) Provide blind or visually impaired individuals with access, to the extent provided in this subchapter, to interactive use of the equipment and services that is equivalent to that provided to individuals who are not blind or visually impaired;

(b) Are designed to present information, including, but not limited to, prompts used for interactive communications in formats intended for both visual and nonvisual use; and

(c) Have been purchased under a contract which includes the technology access clause required pursuant to § 25-26-204.

History. Acts 1999, No. 1227, § 3; substituted “to the extent provided in this 2013, No. 308, § 3. subchapter” for “including, but not limited” in (a).

Amendments. The 2013 amendment

25-26-204. Procurement requirements.

(a)(1) The technology access clause specified in § 25-26-203 shall be developed by the Department of Information Systems and shall require compliance with nonvisual access standards established by the department.

(2) The technology access clause shall be included in all contracts for the procurement of information technology by or for the use of entities covered by this subchapter on or after July 30, 1999.

(b) The nonvisual access standards established by the department under subsection (a) of this section shall:

(1) Include the specifications necessary to fulfill the assurances in § 25-26-203;

(2) Follow the standards for software applications and operating systems provided by 36 C.F.R § 1194.21, as it existed on January 1, 2013, subject to the provisions of 36 C.F.R. §§ 1194.1 — 1194.4, as they existed on January 1, 2013;

(3) Follow the standards for web-based intranet and Internet information and applications provided by 36 C.F.R § 1194.22, as it existed on January 1, 2013, subject to the provisions of 36 C.F.R. §§ 1194.1 — 1194.4, as they existed on January 1, 2013; and

(4) Include the following minimum specifications:

(A) That, to the extent provided in this subchapter, effective, interactive control and use of the technology, including without limitation the operating system, software applications, and format of the data presented is readily achievable by nonvisual means;

(B) That, to the extent provided in this subchapter, the technology equipped for nonvisual access is compatible with information technology used by other individuals with whom the blind or visually impaired individual interacts;

(C) That, to the extent provided in this subchapter, nonvisual access technology is integrated into networks used to share communications among employees, program participants, and the public; and

(D) That, to the extent provided in this subchapter, the technology for nonvisual access has the capability of providing equivalent access by nonvisual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired.

(c) The minimum specifications under subsection (b) of this section do not prohibit the purchase or use of an information technology product that does not meet these standards if the information manipulated or presented by the product is inherently visual in nature so that its meaning cannot be conveyed nonvisually.

History. Acts 1999, No. 1227, § 4; 2003, No. 1301, § 1; 2011, No. 750, § 1; 2013, No. 308, § 4.

A.C.R.C. Notes. Acts 2013, No. 308, § 7, provided: “The Department of Information Systems shall modify the existing technology access clause required under § 25-26-204 and any related nonvisual access standards to conform to this act.”

Amendments. The 2011 amendment subdivided (a) as present (a)(1) and (2); substituted “department” for “state” in (a)(1); and inserted “technology access” in (a)(2); subdivided (b) as present (b) and

(b)(4); substituted “department under” for “state pursuant to” in the introductory paragraph of (b); inserted (b)(2) and (3); substituted “is compatible” for “must be compatible” in (b)(4)(B); substituted “is integrated” for “must be integrated” in (b)(4)(C); and substituted “has” for “must have” in (b)(4)(D).

The 2013 amendment rewrote (b)(2) and (b)(3); inserted “to the extent provided in this subchapter” in (b)(4)(A) through (b)(4)(D); and substituted “software applications” for “applications programs” in (b)(4)(A).

25-26-205. Implementation.

(a) For the purpose of assuring the effective phasing in of nonvisual access technology procurement, the head of any covered entity:

(1) May not approve exclusion of the technology access clause from any contract with respect to:

(A) The compatibility of standard operating systems and software with nonvisual access software and peripheral devices; or

(B) The initial design, development, and installation of information systems, including the design and procurement of interactive equipment and software; or

(2) May approve, with respect to nonvisual access software or peripheral devices obtained during the three-year period beginning upon the date of enactment of this act, exclusion of such technology access clause to the extent that the cost of such software or devices for the covered entity exceeds:

(A) Fifty thousand dollars (\$50,000) for the first year;

(B) One hundred thousand dollars (\$100,000) for the second year; and

(C) Two hundred and fifty thousand dollars (\$250,000) for the third year.

(b) Nothing in this section requires the installation of software or peripheral devices used for nonvisual access when the information technology is being used by individuals who are not blind or visually impaired.

(c) Notwithstanding the provisions of subsection (b) of this section, the applications programs and underlying operating systems, including without limitation the format of the data used for the manipulation and presentation of information, shall permit, to the extent provided in this subchapter, the installation and effective use of nonvisual access software and peripheral devices.

(d) Compliance with this subchapter in regard to information technology purchased prior to July 30, 1999, shall be achieved at the time of procurement of an upgrade or replacement of the existing equipment or software.

History. Acts 1999, No. 1227, § 5; inserted "to the extent provided in this 2013, No. 308, § 5. subchapter" and made stylistic changes in

Amendments. The 2013 amendment (c).

CHAPTER 27

ARKANSAS INFORMATION NETWORK

SECTION.

25-27-105. Network manager.

25-27-104. Duties.

Cross References. Release of criminal history information, authorization of, § 12-12-1507.

25-27-105. Network manager.

(a)(1) The Information Network of Arkansas shall contract with a network manager and shall use a competitive bid process after developing, in consultation with the Department of Information Systems, criteria and specifications for such a network manager and his or her duties.

(2)(A) The Information Network of Arkansas may negotiate and enter into a contract with the network manager.

(B) The contract shall specify the duties and responsibilities of the network manager and shall also include any other terms necessary to the agreement.

(b) The network manager shall:

(1) Direct and supervise the day-to-day operations and expansion of the gateway system, including the initial phase of operations necessary to make the gateway system operational;

(2) Attend meetings of the Information Network of Arkansas;

(3) Keep a record of all gateway, network, and related operations of the Information Network of Arkansas. The records shall be the property of the Information Network of Arkansas;

(4) Maintain and be a custodian of all financial and operational records, documents, and papers filed with the Information Network of Arkansas;

(5) Update and revise on a yearly basis the business plan of the Information Network of Arkansas in consultation with and under the direction of the Information Network of Arkansas;

(6) Submit to the Information Network of Arkansas quarterly financial reports, an annual audit, an annual report, and any other information requested by the Board of the Information Network of Arkansas; and

(7) Perform other such activities or services as requested or authorized by the Information Network of Arkansas consistent with the provisions of this chapter.

(c) The Department of Information Systems may provide to the Information Network of Arkansas such staff and other assistance under contract.

History. Acts 1995, No. 1139, § 5; ing set out to reflect a stylistic change in 1999, No. 538, § 4. (b)(3).

Publisher's Notes. This section is be-

CHAPTER 28

ASSESSMENT COORDINATION DEPARTMENT

SECTION.

25-28-108. Specifications for computer-assisted mass appraisal software.

SECTION.

25-28-109. [Repealed.]

A.C.R.C. Notes. References to "this chapter" in §§ 25-28-101 — 25-28-107 may not apply to § 25-28-108 which was enacted subsequently.

Effective Dates. Acts 2005, No. 1417, § 2: Mar. 30, 2005. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the Assessment Coordination Department needs to adopt and implement by rules final specifications for computer assisted mass appraisal software; that the rules need to be in place to protect counties conducting reappraisals; and that this act is immediately necessary because delaying implementation would cause irreparable delays in the proper assessments for property. Therefore, an

emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2006 (1st Ex. Sess.), Nos. 26 and 27, § 4: Apr. 11, 2006. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the Arkansas Supreme Court declared the public school funding system

to be inadequate and that the public schools are operating under a constitutional infirmity which must be corrected immediately; that to correct the constitutional infirmity and to ensure adequate funding for public education, the General Assembly must have more accurate and timely information regarding the assessment, settlement, and collection of property taxes by the counties; and that this act is necessary to allow the Assessment Coordination Department, the Department of Education, and the counties sufficient time to make all necessary rules,

adjustments, calculations, and reports that will be necessary prior to the convening of the 86th General Assembly. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

25-28-108. Specifications for computer-assisted mass appraisal software.

(a) By July 1, 2005, the Assessment Coordination Department shall adopt and implement by rules final specifications for computer-assisted mass appraisal software.

(b)(1) The rules may provide a procedure by which the department may directly compensate computer-assisted mass appraisal software providers who are in compliance with requirements set forth in the final specifications for computer-assisted mass appraisal software.

(2) The department shall require computer-assisted mass appraisal software providers to comply with requirements set forth in the final specifications for computer-assisted mass appraisal software.

History. Acts 2005, No. 1417, § 1.

A.C.R.C. Notes. References to "this chapter" in §§ 25-28-101 — 25-28-107

may not apply to this section which was enacted subsequently.

25-28-109. [Repealed.]

Publisher's Notes. This section, concerning additional authority, was repealed by Acts 2011, No. 633, § 4. The section

was derived from Acts 2006 (1st Ex. Sess.), No. 26, § 3; 2006 (1st Ex. Sess.), No. 27, § 3.

CHAPTER 29

ARKANSAS DEAF AND HEARING IMPAIRED TELECOMMUNICATIONS SERVICES CORPORATION

SECTION.

25-29-103. Assessment on local exchange service providers.

Effective Dates. Acts 2007, No. 102, § 2: Sept. 1, 2007. **provided:** “This act is effective September 1, 2007.”

25-29-103. Assessment on local exchange service providers.

(a) In order to fund the services provided by the Arkansas Deaf and Hearing Impaired Telecommunications Services Corporation, the Board of Directors of the Arkansas Deaf and Hearing Impaired Telecommunications Services Corporation shall levy assessments on all providers of:

(1) Local l exchange service not to exceed ten cents (10¢) per subject access line per month in order to fund the services provided by the corporation; and

(2)(A) Commercial mobile radio service not to exceed ten cents (10¢) per customer account or number.

(B) As used in this section, “commercial mobile radio service” means the same as defined in § 12-10-303.

(b) The board may adjust the assessment no more than once in a calendar year quarter, but at no time shall the assessment exceed the amount set in subsection (a) of this section.

(c) The assessment under subdivision (a)(1) of this section shall not be levied on more than one hundred (100) lines at any single customer location.

(d) The assessments levied under subsection (a) of this section may be collected by the providers of local exchange service or commercial mobile radio service from their customers and transmitted monthly to the board, and the board shall deposit the assessments into a financial institution authorized to accept public funds.

(e) The assessments levied under subsection (a) of this section by the corporation shall not be considered a tax and shall not be affected by any laws of this state governing taxation, nor shall the assessments be subject to any state or local tax or franchise fee.

History. Acts 1997, No. 1080, § 3; § 2, provided: “This act is effective September 1, 2007.”

Effective Dates. Acts 2007, No. 102,

CHAPTER 30
DEPARTMENT OF CAREER EDUCATION

SUBCHAPTER.

1. CAREER EDUCATION.
2. ARKANSAS REHABILITATION SERVICES.

A.C.R.C. Notes. Acts 2013, No. 1370, § 4, provided: “COMPREHENSIVE SYSTEM OF PERSONNEL DEVELOPMENT. The Rehabilitation Act Amendments of 1992, commonly referred to as the Comprehensive System of Personnel

Development (CSPD), requires State Vocational Rehabilitation (VR) agencies to establish qualified personnel standards for rehabilitation personnel, including Vocational Rehabilitation Counselors, that are consistent with any national or State-approved or recognized certification, licensing, or registration that apply to a particular profession. In order to comply with the Rehabilitation Act and its State Plan requirements, there is hereby authorized for the Department of Human Services, Division of Services for the Blind a general waiver of the Financial Management Guide, R1-19-4-522 Continuing Professional Education. This waiver allows the agency to provide college level course-

work in degree programs for Rehabilitation Counselors selected by the agency. This provision covers any and all formula and discretionary grants funded by the U.S. Department of Education Rehabilitation Services Administration, now or in the future, including, but not limited to, the Vocational Rehabilitation Program, Supported Employment, Independent Living, and the Staff Development Grant. No state general revenue shall be expended for the tuition in pursuit of a degree authorized herein.

“The provisions of this section shall be in effect only from July 1, 2013 through June 30, 2014.”

SUBCHAPTER 1 — CAREER EDUCATION

SECTION.

25-30-101. State Board of Career Education.

25-30-102. Powers and duties of the State Board of Career Education.

SECTION.

25-30-106. Department of Career Education.

A.C.R.C. Notes. Acts 2009, No. 787, § 5, provided:

“(a) This act shall not be construed as impairing the continued effectiveness of any rules or orders promulgated or issued by the Department of Workforce Education or the State Board of Workforce Education and Career Opportunities before the effective date of this act.

“(b) This act shall not be construed as extinguishing or otherwise affecting the unexpired terms of any current members of the State Board of Workforce Education and Career Opportunities.”

Effective Dates. Acts 2009, No. 787, § 7: July 1, 2009. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act renames the Department of Workforce Education and the State Board of Workforce Education and Career Opportunities and that the ideal time to implement these name changes is at the beginning of the state’s fiscal year. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2009.”

25-30-101. State Board of Career Education.

(a) There is hereby created the State Board of Career Education, hereinafter referred to as “the board”.

(b) The State Board of Vocational Education created by § 6-11-101 is abolished and transferred to the State Board of Career Education by a type 3 transfer under § 25-2-106.

(c) The State Board of Career Education shall be composed as follows:

(1) Seven (7) members appointed by the Governor subject to confirmation by the Senate, one (1) member from each congressional district and three (3) members from the state at large; and

(2) The members shall be selected from among parents, business, industry, labor, persons with disabilities, minorities, and other groups who shall be representative of the many career opportunities available in the state such as:

- (A) Administration, business, and finance management;
- (B) Agriculture, forestry, and natural resources;
- (C) Art, media, and communications;
- (D) Construction and extractive;
- (E) Education and training services;
- (F) Health and medical services;
- (G) Hospitality and tourism;
- (H) Legal and protective services;
- (I) Manufacturing, processing, and systems operations;
- (J) Marketing, sales, and promotion;
- (K) Mechanical and technical services and precision crafts;
- (L) Natural and applied science and engineering;
- (M) Personal and commercial services; and
- (N) Transportation and material moving.

(d) The term of office of members shall be seven (7) years, except that at the first meeting the members shall draw lots for staggered terms so that no more than one (1) membership shall expire each year on June 30.

(e) A person may not serve as a member of the State Board of Career Education unless he or she is a qualified elector of this state.

(f) A candidate for or holder of a public office in the state, Director of the Department of Education or Director of the Department of Higher Education, employee of a public school district, employee of a postsecondary or higher education institution, or member of any board of directors or board of trustees of any postsecondary or higher education institution in this state shall not serve as a member of the State Board of Career Education.

(g) When a vacancy occurs in the membership of the board, a successor will be appointed in the same manner as the person succeeded and will serve the person's unexpired term, subject to all other provisions of this subchapter.

(h) The members of the State Board of Career Education shall serve without remuneration, except as specified in § 25-16-901 et seq. for the state board of vocational education.

(i) The State Board of Career Education shall elect from its own number a chair and such other officers as may be deemed necessary to carry on its business.

(j) The State Board of Career Education shall meet at least one (1) time during each calendar quarter and at such other times upon call of the chair or any other three (3) members.

(k)(1) The State Board of Career Education shall appoint from its membership a liaison officer to the State Board of Education, the

Arkansas Higher Education Coordinating Board, the Department of Human Services, the Department of Workforce Services, and the Arkansas Economic Development Commission.

(2) Liaison officers shall attend the board and council meetings or other appropriate meetings as designated by the chair and shall represent and articulate the policies of the State Board of Career Education to these boards, councils, and agencies.

(l) The Director of the Department of Education and the Director of the Department of Higher Education shall serve as ex officio nonvoting members of the State Board of Career Education.

(m) The Director of the Department of Higher Education and the Director of the Department of Career Education shall serve as ex officio nonvoting members of the State Board of Education.

(n) The Director of the Department of Career Education and the Director of the Department of Education shall serve as ex officio nonvoting members of the Arkansas Higher Education Coordinating Board.

History. Acts 1999, No. 1323, § 58; 2001, No. 1288, § 25; 2009, No. 787, § 3; 2011, No. 1122, § 6.

A.C.R.C. Notes. Acts 2009, No. 787, § 2, provided: "State Board of Workforce Education and Career Opportunities renamed State Board of Career Education."

"(a)(1) The State Board of Workforce Education and Career Opportunities, as it is referred to or empowered through the Arkansas Code, is renamed."

"(2) In its place, the State Board of Career Education is established, succeeding to the general powers and responsibilities previously assigned to the State Board of Workforce Education and Career Opportunities."

"(3) The Chair of the State Board of Workforce Education and Career Opportunities shall identify and revise all inter-agency agreements, financial instruments, funds, and other necessary legal documents in order to effect this change."

"(b) Nothing in this act shall be construed as impairing the powers and authority of the State Board of Workforce Education and Career Opportunities before the effective date of the name change."

"(c) Appropriations authorized for the personal services and operating expenses of the State Board of Workforce Education and Career Opportunities may be utilized for the personal services and operating expenses of the State Board of Career Education."

Amendments. The 2009 amendment substituted "State Board of Career Education" for "State Board of Workforce Education and Career Opportunities" throughout the section; and substituted "Career" for "Workforce" in (m) and (n).

The 2011 amendment substituted "A person may not serve" for "No person may serve" in (e); and, in (f), substituted "A candidate" for "No candidate" and inserted "not" preceding "serve."

25-30-102. Powers and duties of the State Board of Career Education.

(a) On April 24, 1997, the State Board of Career Education shall become vested with and succeed to all the rights, titles, powers, interests, obligations, duties, and responsibilities of the State Board of Vocational Education.

(b) The State Board of Career Education shall develop and monitor a state plan for vocational-technical education which shall include the establishment of at least one (1) area vocational center in each education service cooperative service area and in Pulaski County. All

policy issues affecting the public schools will be developed by the State Board of Career Education after consultation with the State Board of Education and implemented in coordination with the Department of Education or the education service cooperatives, or both.

(c) The State Board of Career Education shall have general supervision of all programs regarding vocational, technical, and occupational education. All of those programs and the funding of those programs shall be subject to the approval of the board.

(d)(1) The responsibilities of the State Board of Career Education shall include, but not be limited to, the following:

(A) Establishing policies relating to plans and specifications for facilities and instructional equipment;

(B) Prescribing standardized standards for programs and teachers;

(C) Approving applied courses of related academic instruction; and

(D) Other items relative to program quality and operation.

(2) The State Board of Career Education shall have the authority to reorganize and restructure current programs and personnel in the institutions covered in this section. Any savings of appropriated funds effected thereby may be used by the board for other programs as it deems appropriate.

(e) The State Board of Education shall be responsible for the administration of all funds appropriated by the General Assembly for public education based on the average daily membership of students enrolled in vocational education programs in the public schools, and these funds shall be administered through the Department of Education.

(f) All references in the laws of this state to the State Board of Vocational Education shall be construed to refer to the State Board of Career Education.

History. Acts 1999, No. 1323, § 58;
2007, No. 617, § 45.

25-30-106. Department of Career Education.

(a) There is hereby created the Department of Career Education, hereinafter referred to as “the department”.

(b) The Vocational and Technical Education Division of the Department of Education created by § 25-6-101, the Governor’s Commission on Adult Literacy created by § 6-44-201 [repealed], and the Advisory Council for Vocational-Technical Education created by § 6-50-601 [repealed] are abolished and transferred to the Department of Career Education by a type 3 transfer under § 25-2-106.

(c) The Arkansas Rehabilitation Services as an agency responsible to the State Board of Career Education and as a part of the Department of Career Education shall function as an agency in accordance with § 6-52-101 et seq. and § 25-30-201 et seq. This subchapter shall assure that the Arkansas Rehabilitation Services functions organizationally at

a level at least equal to that of any division or entity of the Department of Career Education.

(d) The board shall appoint a director of the Department of Career Education who shall:

- (1) Be a member of the Governor's cabinet;
- (2) Be confirmed by the Governor; and
- (3) Serve at the pleasure of the Governor.

(e) The director shall devote all of his or her time to the duties of his or her office, shall act as agent of the board, and shall perform such other duties as are designated by the board or by statute.

(f) The director shall serve as the ex officio secretary of the board without vote.

(g) The person selected as director shall:

- (1) Be of good moral character;
- (2) Be recognized as a leader in the field of vocational or workforce education;
- (3) Have a bachelor's degree from an accredited institution; and
- (4) Be qualified technically and by experience to direct the work of the Department of Career Education.

(h) No person who is related within the fourth degree of consanguinity or affinity to any member of the board shall be eligible to serve as director of the Department of Career Education.

History. Acts 1999, No. 1323, § 58; 2009, No. 787, § 4; 2013, No. 1438, § 1.

A.C.R.C. Notes. Acts 2009, No. 787, § 1, provided: "Department of Workforce Education renamed Department of Career Education.

"(a)(1) The Department of Workforce Education, as it is referred to or empowered through the Arkansas Code, is renamed.

"(2) In its place, the Department of Career Education is established, succeeding to the general powers and responsibilities previously assigned to the Department of Workforce Education.

"(3) The Director of the Department of Workforce Education shall identify and revise all interagency agreements, financial instruments, funds, and other necessary legal documents in order to effect this change.

"(b) Nothing in this act shall be construed as impairing the powers and au-

thority of the Department of Workforce Education before the effective date of the name change.

"(c) Appropriations authorized for the personal services and operating expenses of the Department of Workforce Education may be utilized for the personal services and operating expenses of the Department of Career Education."

Amendments. The 2009 amendment rewrote the section heading; substituted "Department of Career Education" for "Department of Workforce Education" in four places; and substituted "State Board of Career Education" for "State Board of Workforce Education and Career Opportunities" in (c).

The 2013 amendment substituted "shall" for "must be a person of" in (g); subdivided part of (g) into (g)(1), (g)(2) and (g)(4); and inserted (g)(3).

SUBCHAPTER 2 — ARKANSAS REHABILITATION SERVICES

SECTION.

25-30-203. Powers and duties.

25-30-205. Office facilities.

25-30-206. Arkansas Rehabilitation Ser-

vices Forgiveness of Student Loan Program.

25-30-203. Powers and duties.

(a) The State Board of Career Education, through the Arkansas Rehabilitation Services of the Department of Career Education, shall provide the rehabilitation services authorized by this subchapter to eligible physically or mentally disabled individuals and those who can benefit from vocational rehabilitation and independent living services, as determined by the agency to be eligible therefor.

(b) In carrying out the purposes of this subchapter, the Arkansas Rehabilitation Services is authorized, among other things:

(1) To be the sole state agency to supervise and administer the rehabilitation services authorized by this subchapter except such part or parts as may be administered by a local agency in a political subdivision of the state, in which case the Arkansas Rehabilitation Services shall be the sole agency to supervise such a local agency in the administration of such part or parts;

(2) To conduct research and compile statistics relative to the provision of services or the need of services of disabled individuals; and

(3) To administer the Arkansas Rehabilitation Services Forgiveness of Student Loan Program.

History. Acts 1999, No. 1323, § 58; § 3, provided: "This Arkansas Rehabilitation Services Forgiveness of Student Loan Program expires on June 30, 2009."

A.C.R.C. Notes. Acts 2007, No. 1207, Program expires on June 30, 2009."

25-30-205. Office facilities.

The Arkansas Building Authority shall ensure that all offices of the Arkansas Rehabilitation Services of the Department of Career Education are exemplary models of accessibility and conform to the Americans with Disabilities Act accessibility guidelines.

History. Acts 1999, No. 1323, § 58; 2007, No. 186, § 12.

25-30-206. Arkansas Rehabilitation Services Forgiveness of Student Loan Program.

(a) There is established the Arkansas Rehabilitation Services Forgiveness of Student Loan Program to assist counselors employed by the Arkansas Rehabilitation Services with the repayment of student loans.

(b)(1) The program shall be administered by the Arkansas Rehabilitation Services of the Department of Career Education.

(2) The Arkansas Rehabilitation Services shall promulgate rules for determining: a counselor's eligibility for a loan under the program that shall include the following requirements:

(A) Satisfactory completion of any probationary employment period;

(B) Proof of a student loan that remains unpaid, including the name and address of the creditor; and

(C) An executed employment contract in which the counselor agrees to:

(i) Work for the Arkansas Rehabilitation Services for a term that equals two (2) years for each year that the program makes a payment on the counselor's student loan; and

(ii) Reimburse the program the full amount of any loan payments made under the program if the counselor resigns or is terminated for cause before the term of the contract terminates.

(3) The amount of the payment to be made directly to the counselor's student loan creditor may not exceed:

(A) Two thousand dollars (\$2,000) per year; or

(B) Ten thousand dollars (\$10,000) per employee.

History. Acts 2007, No. 1207, § 2.

A.C.R.C. Notes. Acts 2013, No. 722, § 10, provided: "FORGIVENESS OF STUDENT LOAN PROGRAM. The Forgiveness of Student Loan Program shall be available to counselors employed by Arkansas Rehabilitation Services that have been determined eligible by rules promulgated by Arkansas Rehabilitation Services as required by Arkansas Code §25-30-206. These rules shall be submitted to the Administrative Rules and Regulations Subcommittee of the Arkansas Legislative Council and receive prior review. These rules must include the following eligibility requirements:

"(1) Satisfactory completion of any probationary period;

"(2) Proof of a student loan that remains unpaid, including the name and address of the creditor;

"(3) An executed employment contract in which the counselor agrees to the following:

"(a) work for Arkansas Rehabilitation Services for a term that equals two (2) years for each year that the program makes a payment on the counselor's student loan and

"(b) reimburse the program the full amount of any loan payments made under this program in the event that the counselor resigns or is terminated for cause before the term of the contract terminates.

"The amount of payment to be made directly to the counselor's student loan creditor may not exceed:

"(1) Two thousand dollars (\$2,000) per year; or

"(2) Ten thousand dollars (\$10,000) per employee.

"The Arkansas Rehabilitation Services agency shall pay for the Forgiveness of Student Loan Program from the Rehabilitation Program Grants — Grants and Aid line item authorized for the appropriation entitled Rehabilitation Services — Operations in an amount not to exceed eighty thousand dollars (\$80,000) per fiscal year.

"In addition, the Arkansas Rehabilitation Services agency shall provide a formal, written notification to all counselors employed by Arkansas Rehabilitation Services of the availability of the Forgiveness of Student Loan Program by July 1 of each fiscal year. The agency shall include with the notification, the promulgated rules which shall outline the eligibility requirements for participation.

"The agency shall submit a copy of this notification to the Arkansas Legislative Council or Joint Budget Committee by July 1 of each fiscal year. In addition, Arkansas Rehabilitation Services shall report bi-annually, by the 15th day of the month following the end of each six month period, to the Arkansas Legislative Council or Joint Budget Committee the number of employees participating in the program."

CHAPTER 31**ELECTRONIC RECORDS AND SIGNATURES****SECTION.**

25-31-104. Agreement to electronic record or signature.

25-31-104. Agreement to electronic record or signature.

(a) Any person may, but shall not be required to, accept or agree to be bound by an electronic record which is:

(1) Executed or adopted with an electronic signature; and

(2) Witnessed or notarized using an electronic signature, when that acceptance or agreement is otherwise required to be witnessed or notarized.

(b) When a person or other entity accepts or agrees to be bound by an electronic record as provided in this section, then any rule of law which requires:

(1) A record of that type to be in writing, shall be deemed satisfied;

(2) A signature, shall be deemed satisfied; and

(3) A witness or notary, shall be deemed satisfied by the electronic signature of the witness or notary.

History. Acts 1999, No. 718, § 4.

at the end of the introductory language in (b).

Publisher's Notes. This section is being set out to correct a punctuation error

CHAPTER 32**UNIFORM ELECTRONIC TRANSACTIONS ACT****SECTION.**

25-32-117. Creation and retention of electronic records and conversion of written records by governmental agencies.

SECTION.

25-32-118. Acceptance and distribution of electronic records by governmental agencies.

25-32-119. Interoperability.

Effective Dates. Acts 2007, No. 751, § 38: July 1, 2007. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act dissolves and transfers the duties of the Executive Chief Information Officer, Chief Information Officer, and Office of Information Technology; and that

dissolving the offices at the beginning of the state's fiscal year will result in a more efficient transfer of responsibilities and funds. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2007."

25-32-101. Short title.**RESEARCH REFERENCES**

U. Ark. Little Rock L. Rev. Survey of Legislation, 2001 Arkansas General Assembly, Uniform Electronic Transactions Act, 24 U. Ark. Little Rock L. Rev. 603.

25-32-107. Legal recognition of electronic records, electronic signatures, and electronic contracts.**CASE NOTES****Signature.**

Insured's wife completed an online application expressly rejecting medical benefits coverage, as under subsection (c) of this section the record of the wife's elec-

tronic signature that memorialized the wife's rejection of coverage qualified as a written rejection of benefits under § 23-89-203. *Barwick v. Gov't Emple. Ins. Co.*, 2011 Ark. 128, — S.W.3d — (2011).

25-32-117. Creation and retention of electronic records and conversion of written records by governmental agencies.

(a) Each governmental agency of this State shall determine whether and the extent to which it will create and retain electronic records and convert written records to electronic records.

(b) Each state agency shall comply with applicable standards and policies adopted or established by the Department of Finance and Administration with advice and review from the Department of Information Systems to determine whether and the extent to which it will retain and convert written records to electronic records.

History. Acts 2001, No. 905, § 17; 2007, No. 751, § 23.

25-32-118. Acceptance and distribution of electronic records by governmental agencies.

(a)(1) Except as otherwise provided in § 25-32-112(f), each governmental agency of this state shall determine whether and the extent to which it will send and accept electronic records and electronic signatures to and from other persons and otherwise create, generate, communicate, store, process, use, and rely upon electronic records and electronic signatures.

(2) For state agencies, the determinations shall be consistent with applicable standards and policies adopted or established by the Department of Finance and Administration with advice and review from the Department of Information Systems.

(b) To the extent that a governmental agency uses electronic records and electronic signatures under subsection (a), the governmental agency, giving due consideration to security, may specify:

(1) The manner and format in which the electronic records must be created, generated, sent, communicated, received, and stored and the systems established for those purposes;

(2) If electronic records must be signed by electronic means, the type of electronic signature required, the manner and format in which the electronic signature must be affixed to the electronic record, and the identity of, or criteria that must be met by, any third party used by a person filing a document to facilitate the process;

(3) Control processes and procedures as appropriate to ensure adequate preservation, disposition, integrity, security, confidentiality, and auditability of electronic records; and

(4) Any other required attributes for electronic records which are specified for corresponding nonelectronic records or reasonably necessary under the circumstances.

(c) Except as otherwise provided in § 25-32-112(f), this chapter does not require a governmental agency of this State to use or permit the use of electronic records or electronic signatures.

History. Acts 2001, No. 905, § 18;
2007, No. 751, § 24.

25-32-119. Interoperability.

With respect to standards adopted pursuant to § 25-32-118, the Department of Finance and Administration may encourage and promote consistency and interoperability with similar requirements adopted by other governmental agencies of this and other states and the federal government and nongovernmental persons interacting with governmental agencies of this state. If appropriate, those standards may specify differing levels of standards from which governmental agencies of this State may choose in implementing the most appropriate standard for a particular application.

History. Acts 2001, No. 905, § 19;
2007, No. 751, § 25.

CHAPTER 33

EXECUTIVE CHIEF INFORMATION OFFICER AND CIO COUNCIL

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. ARKANSAS TECHNOLOGY INFRASTRUCTURE FUND.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 25-33-101. State Technology Council.
25-33-102 — 25-33-107. [Repealed.]

Publisher's Notes. Due to the enactment of subchapter 2 by Acts 2005, No. 2248, the existing provisions of this chapter have been redesignated as subchapter 1.

Effective Dates. Acts 2005, No. 918, § 3: Mar. 18, 2005. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that there is no general records retention law and that this act is immediately necessary to preserve public records that could be lost permanently without this act. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the

expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2007, No. 751, § 38: July 1, 2007. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act dissolves and transfers the duties of the Executive Chief Information Officer, Chief Information Officer, and Office of Information Technology; and that dissolving the offices at the beginning of the state's fiscal year will result in a more efficient transfer of responsibilities and funds. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2007."

25-33-101. State Technology Council.

(a) There is created the State Technology Council to consist of the following members:

(1) The Director of the Department of Information Systems or his or her designee who shall act as chair of the council;

(2) The Director of the Department of Finance and Administration or his or her designee;

(3) Two (2) members from the private sector appointed by the Governor with knowledge and experience in the management and implementation of information technology; and

(4) Two (2) members from state agencies appointed by the Governor who have knowledge and experience in the management and implementation of information technology.

(b) The State Technology Council shall be responsible for developing:

(1) The information technology standards and specifications for state agencies;

(2) A state information technology plan that shall establish state-level mission, goals, and objectives for the use of information technology; and

(3) Technical standards and specifications to support the state's shared enterprise architecture.

(c) The council may meet as deemed necessary by the chair of the council.

(d) A quorum of the council shall consist of three (3) members.

(e) Members of the council shall serve without compensation.

(f) The chair of the council shall file a quarterly status report with the Governor and the Joint Committee on Advanced Communications and Information Technology.

History. Acts 2001, No. 1042, § 1; 2007, No. 751, § 26.

25-33-102 — 25-33-107. [Repealed.]

Publisher’s Notes. These sections, concerning definitions, the Executive Chief Information Officer, Executive Chief Information Officer — duties, CIO Council, and Information Technology Oversight Committee, were repealed by Acts 2007, No. 751, §§ 27-32. The sections were derived from the following sources:

25-33-102. Acts 2001, No. 1042, § 2.

25-33-103. Acts 2001, No. 1042, § 3; 2001, No. 1722, § 16.

25-33-104. Acts 2001, No. 1042, § 4; 2001, No. 1722, § 17; 2005, No. 918, § 2.

25-33-105. Acts 2001, No. 1042, § 5.

25-33-106. Acts 2001, No. 1042, § 6.

25-33-107. Acts 2001, No. 1042, § 7; 2001, No. 1722, § 18.

SUBCHAPTER 2 — ARKANSAS TECHNOLOGY INFRASTRUCTURE FUND

SECTION.

25-33-201 — 25-33-205. [Repealed.]

Effective Dates. Acts 2007, No. 751, § 38: July 1, 2007. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act dissolves and transfers the duties of the Executive Chief Information Officer, Chief Information Officer, and Office of Information Technology; and that

dissolving the offices at the beginning of the state’s fiscal year will result in a more efficient transfer of responsibilities and funds. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2007.”

25-33-201 — 25-33-205. [Repealed.]

Publisher’s Notes. These sections, concerning findings and purpose, the Arkansas Technology Infrastructure Fund creation, project standards and methodologies, project funding, and applicability, were repealed by Acts 2007, No. 751, §§ 33-37. The sections were derived from the following sources:

25-33-201. Acts 2005, No. 2248, § 1.

25-33-202. Acts 2005, No. 2248, § 1.

25-33-203. Acts 2005, No. 2248, § 1.

25-33-204. Acts 2005, No. 2248, § 1.

25-33-205. Acts 2005, No. 2248, § 1.

CHAPTER 34

ARKANSAS COMPUTER AND ELECTRONIC SOLID WASTE MANAGEMENT

SECTION.

25-34-102. Findings and purpose.

25-34-103. Definitions.

25-34-104. Agency policy.

SECTION.

25-34-106. Sale of surplus computer equipment and electronics.

25-34-107. Surplus equipment not sold.

SECTION.

25-34-111. Computer and electronic equipment landfill ban.

25-34-101. Title.**RESEARCH REFERENCES**

U. Ark. Little Rock L. Rev. Survey of assembly, Public Agencies, 24 U. Ark. Little Rock L. Rev. 601.

25-34-102. Findings and purpose.

(a) The General Assembly finds that:

(1) Computer and electronic solid waste is among the fastest growing and most toxic segments of Arkansas' solid waste stream;

(2)(A) The state must frequently upgrade and replace computers, telecommunications devices, and other technologically sophisticated equipment necessary to the efficient operation of state government.

(B)(i) The necessary purchase of up-to-date computers, telecommunications devices, and other technological equipment for state government use often results in a surplus of existing equipment that, while unfit for state government purposes, is still useful and marketable for less complex and less high-speed dependent use.

(ii) Surplus equipment is generally stored by the owner agency until the equipment is cleared of all government software and files.

(iii) By the time surplus computer equipment is delivered to the Marketing and Redistribution Section of the Office of State Procurement of the Department of Finance and Administration, it is generally technologically obsolete and has lost considerable value, resulting in a significant waste of potential revenue to the State of Arkansas;

(3) Computers and electronic equipment not sold by the Marketing and Redistribution Section may be disposed of in state landfill space until January 1, 2008; and

(4) There are disposal and recycling options other than landfill disposal to address this problem, including:

(A) Parts harvesting;

(B) Reuse;

(C) Resale;

(D) Donation; and

(E) Demanufacturing.

(b) This chapter is intended to:

(1) Achieve the maximum possible benefit from use of state agency-owned computers, electronics, and peripherals;

(2) Achieve maximum benefit from sale of surplus state agency assets; and

(3) Protect the public health, safety, and the environment by mandating that steps be taken to address the solid waste management of computers and other electronic solid waste statewide.

History. Acts 2001, No. 1410, § 2;
2005, No. 970, § 1.

25-34-103. Definitions.

As used in this chapter:

(1) "Agency" means every department, division, office, board, commission, and institution of this state, including state-supported institutions of higher education;

(2) "Computer" means a programmable electronic machine that performs high-speed mathematical or logical operations or that assembles, stores, correlates, or otherwise processes information;

(3)(A) "Consumer electronic item" means a personal computer, computer component, audio player, stereo player, videocassette player, facsimile machine, copy machine, cellular telephone, wireless paging device, video game console, or any electronic item containing an intact or broken cathode ray tube.

(B) An electronic item containing a cathode ray tube includes a television, computer monitor, or any other cathode ray tube monitor or display device;

(4) "Degauss" means the complete removal of information from the hard drive of a computer;

(5)(A) "Demanufacturing" means end-of-life disposition of electronic devices and computers.

(B) "Demanufacturing" includes recovery of hard drives and chips with resale value, the removal of commodities such as copper, aluminum, and gold for sale to scrap consumers, the removal and hazardous-waste disposal of toxins and heavy metals, and the shredding or melting of materials that can be sold and manufactured into new products;

(6) "Disposal" means the discharge, deposit, injection, spilling, leaking, placing, or dumping of any computer or electronic waste into or on any land or water in whatever manner so that the waste or any constituent thereof might enter the environment or be emitted into the air or be discharged into the waters of the state, including groundwaters;

(7) "Electronics" means devices utilizing electrons and electric circuits, including household appliances, televisions, recording and playing devices for music or video tapes, compact discs, and digital technology;

(8) "Fugitive amounts of consumer electronic items" means small quantities that escape the approved methods of usage, reduction, reuse, or recycling;

(9) "Fund" means the Computer and Electronic Recycling Fund established by this chapter;

(10) "Recycle" means the use of previously manufactured materials including metals, glass, and plastics in the manufacture of new products;

(11) "Reuse" means use of electronics, computers, and equipment for harvesting of spare parts, resale, or donation; and

(12) "Surplus computer equipment" means computer components no longer in use in an agency and which have residual market value.

History. Acts 2001, No. 1410, § 3;
2005, No. 970, § 2.

25-34-104. Agency policy.

(a)(1) Each agency shall prepare and implement an agency-wide policy for the management and sale of agency surplus computer equipment and electronics in accord with the Director of the Department of Information Systems policies for review and replacement of computer and electronic equipment.

(2) The policy shall mandate that all hard drives of surplus computer equipment be degaussed, cleared of all data and software, and be otherwise prepared for sale within ninety (90) days after replacement.

(3) The policy may provide that computers and electronic equipment first be offered for sale to agency personnel after degaussing of the hard drive.

(4)(A) The policy shall allow each agency to keep a back stock of computer hardware and electronics for the purpose of parts harvesting for the repair, maintenance, and upgrade of computers in use.

(B) Back stock shall not exceed ten percent (10%) of the number of state employee computers in the agency.

(5) The policy shall include a provision that state employees purchasing state agency computers and electronic equipment accept the computer or equipment on an "as-is" basis, without any warranty of any kind by the agency.

(b) Within sixty (60) days after August 12, 2005, the policy shall be presented to the Director of the Department of Information Systems and the Legislative Council for review.

History. Acts 2001, No. 1410, § 4;
2005, No. 970, § 3.

25-34-106. Sale of surplus computer equipment and electronics.

(a) If an agency policy established under § 25-34-104 provides for the preferential sale of surplus computer and electronic equipment to agency employees, that computer and electronic equipment shall be sold at a price determined by the Department of Finance and Administration.

(b) If an agency policy established under § 25-34-104 provides for the preferential sale of surplus computer and electronic equipment to Arkansas public schools or local governments, that computer and electronic equipment shall be sold at a price determined by the Department of Finance and Administration.

History. Acts 2001, No. 1410, § 6;
2005, No. 970, § 4.

25-34-107. Surplus equipment not sold.

(a)(1) Unsold surplus computer and electronic equipment may be donated by the owning agency to Arkansas public schools or local governments if the agency policy so provides.

(2) Arkansas public schools and local governments are not required but may choose to accept unsold surplus computer and electronic equipment donated by the owning agency.

(b)(1) Unsold surplus computer and electronic equipment may be donated by the owning agency to law enforcement agencies if the agency policy so provides.

(2) Law enforcement agencies are not required but may choose to accept unsold surplus computer and electronic equipment donated by the owning agency.

(c)(1) Unsold surplus computer equipment may be sent to the Marketing and Redistribution Section of the Office of State Procurement of the Department of Finance and Administration for sale, auction, recycling, donation, demanufacturing, or disposal.

(2) Alternatively, the agency may maintain possession of computers and electronics and allow the Marketing and Redistribution Section to sell or auction the computer or electronic equipment via an Internet website.

History. Acts 2001, No. 1410, § 7;
2003, No. 1028, § 1; 2005, No. 970, § 5.

25-34-111. Computer and electronic equipment landfill ban.

Effective January 1, 2010, the Arkansas Pollution Control and Ecology Commission may establish and implement rules banning the disposal of all computer and electronic equipment in Arkansas landfills.

History. Acts 2001, No. 1410, § 12;
2005, No. 970, § 6; 2007, No. 512, § 3.

CHAPTER 35

ARKANSAS MULTI-AGENCY INSURANCE TRUST FUND
ACT

- SECTION.
- 25-35-101. Title.
 - 25-35-102. Definitions.
 - 25-35-103. Arkansas Multi-Agency Insurance Trust Fund.
 - 25-35-104. Participation.
 - 25-35-105. Administration.

- SECTION.
- 25-35-106. Premiums and schedules of coverage and endorsements.
 - 25-35-107. Payment of losses.
 - 25-35-108. Limits on use of risk management data as evidence.

Effective Dates. Acts 2003, No 1762, § 2: Apr. 22, 2003. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkan-

sas that the insurance market is volatile and that insurance costs are increasing; that assistance is immediately necessary to minimize insurance costs; that establishment of a trust fund is immediately necessary to protect state agency budgets from insurance market volatility; and that this subchapter is designed to provide property, inland marine, boiler and machinery, and automobile liability and physical damage coverage for state agencies participating in the trust fund. There-

fore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

25-35-101. Title.

This chapter may be cited as the "Arkansas Multi-Agency Insurance Trust Fund Act".

History. Acts 2003, No. 1762, § 1.

25-35-102. Definitions.

For the purposes of this chapter:

(1) "Annual aggregate deductible" means the maximum amount payable annually from the Arkansas Multi-Agency Insurance Trust Fund for covered losses;

(2) "Insurance Commissioner" means the Insurance Commissioner of the State Insurance Department or the commissioner's successor;

(3) "Risk manager" means the Administrator of the Risk Management Division of the State Insurance Department;

(4) "State agency" means any state agency, board, bureau, commission, council, department, institution, or other similar entity; and

(5) "Trust fund" means the Arkansas Multi-Agency Insurance Trust Fund.

History. Acts 2003, No. 1762, § 1.

25-35-103. Arkansas Multi-Agency Insurance Trust Fund.

(a) There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State, a separate fund to be known as the Arkansas Multi-Agency Insurance Trust Fund.

(b) No money shall be appropriated from the trust fund for any purpose except to pay:

(1) Insurance and reinsurance premiums;

(2) Loss adjustment expenses;

(3) Related educational and training expenses;

(4) Insured claims falling below the annual aggregate deductible level; and

(5) Expenses including actuarial, consultant, and service contract fees.

(c)(1) The assets of the trust fund may be invested and reinvested as the Insurance Commissioner may determine.

(2) All income derived through investment of the fund as established under this chapter shall be credited as investment income to the trust fund.

(3) For the purposes of investment, trust fund moneys invested and interest earned thereon shall be administered as trust funds.

(4) All moneys deposited to the trust fund shall not be subject to any deduction, tax, levy, or any other type of assessment.

(d) All moneys received by the risk manager, including, but not limited to, the premiums collected and any insured loss or loss expenses paid by insurance or reinsurance companies shall be deposited in the trust fund created in this section.

History. Acts 2003, No. 1762, § 1.

25-35-104. Participation.

(a) Effective July 1, 2003, the following agencies shall participate in the Multi-Agency Insurance Trust Fund:

(1) State agencies participating in the Arkansas Master Agency Property Policy as of June 30, 2003;

(2) The Department of Correction;

(3) The Department of Community Correction; and

(4) State agencies participating in the Arkansas State Master Vehicle Policy as of June 30, 2003.

(b) Upon approval by the risk manager, other state agencies may participate in the trust fund.

History. Acts 2003, No. 1762, § 1.

25-35-105. Administration.

(a) The Arkansas Multi-Agency Insurance Trust Fund shall be administered by the Insurance Commissioner.

(b) At the discretion of the commissioner, the risk manager may:

(1) Enter into contracts;

(2) Purchase insurance and reinsurance in accordance with the Arkansas Procurement Law, § 19-11-201 et seq.;

(3) Adjust, settle, and pay or deny claims with notice to a claimant;

(4) Pay expenses and costs;

(5) Study the risks of all participating state agencies and their properties;

(6) Promulgate the form for insurance and reinsurance policies and other forms;

(7) Issue certificates of coverage to state agencies for any risks covered by the trust fund;

(8) Make recommendations about risk management and risk reduction strategies to participating state agencies;

(9) Review participating state agency building construction, major remodeling plans, program plans, and make recommendations to the participating state agency about needed changes to address risk considerations;

(10) Utilize underwriting discretion and authority to deny coverage of any risk deemed to adversely affect the financial stability of the trust fund;

(11) Establish values for participating state agency buildings and structures to be insured;

(12) Attend state agency planning and management meetings;

(13) Review any proposed legislation and communicate with members of the General Assembly and legislative committees about the liability or risk management issues connected with any legislation; and

(14) Solicit any needed information about state agency plans, state agency programs, or state agency risks necessary to perform the responsibilities under this chapter.

(c)(1) The risk manager may expend moneys from the trust fund to procure and provide coverage to all participating state agencies and their indemnified employees except those agencies or employees specifically exempted by statute or elsewhere in this chapter.

(2) The risk manager shall apportion the costs of coverage under subdivision (c)(1) of this section consistent with this chapter.

History. Acts 2003, No. 1762, § 1.

25-35-106. Premiums and schedules of coverage and endorsements.

(a)(1) Premiums shall be charged to each agency based on the rates established by the risk manager that include all costs associated with the operation of the Arkansas Multi-Agency Insurance Trust Fund, based upon sound rating techniques.

(2) The risk manager shall provide premium billings to participating state agencies for each renewal and for participating agency changes occurring during the policy year.

(3) If any participating state agency fails to pay its premium charges within thirty (30) days after the due date, the risk manager shall notify the delinquent state agency that coverage will be cancelled due to nonpayment of premium unless the delinquent payment is made within thirty (30) days of the notice.

(4) Funds appropriated or otherwise made available to participating state agencies for payment of premium shall not be reduced as a result of any shortfall of projected revenues.

(b) The risk manager will provide each agency with a renewal schedule of coverage and an endorsement for each participating state agency change occurring during the policy year.

History. Acts 2003, No. 1762, § 1.

25-35-107. Payment of losses.

The risk manager shall establish:

(1) Appropriate policies and procedures governing the payment of losses from the Arkansas Multi-Agency Insurance Trust Fund, including notice or proof of loss by any participating state agency; and

(2) Policies and procedures governing disputes that may arise between the risk manager and any person having charge over the property in question concerning the extent of loss or damage.

History. Acts 2003, No. 1762, § 1.

25-35-108. Limits on use of risk management data as evidence.

Notwithstanding any other provision of law, any report, recommendation, survey, schedule, list, or data compiled, or action taken or not taken by or at the request of the risk manager to identify, evaluate, or plan the safety enhancement or risk reduction of any potential accident sites or other hazards related to any entity covered by the Arkansas Multi-Agency Insurance Trust Fund may not be admitted into evidence in any court or used for any other purposes in any action for damages arising from any occurrence at a location mentioned or addressed in the reports, recommendation, survey, schedule, list, or data.

History. Acts 2003, No. 1762, § 1.

CHAPTER 36

ARKANSAS ECONOMIC OPPORTUNITY EXPANSION ACT

SECTION.

25-36-101. Findings — Purpose.

25-36-102. Definitions.

25-36-103. Agency contracting — Diversity.

SECTION.

25-36-104. Data recording and tracking.

25-36-101. Findings — Purpose.

(a) The General Assembly finds:

(1) To the extent minority-owned businesses are given fair opportunities to compete, all Arkansans benefit;

(2) During 2002, the State of Arkansas spent nine hundred million four hundred thousand dollars (\$900,400,000) procuring goods and services;

(3) Although the state possesses more than seven thousand (7,000) minority-owned businesses, less than three tenths of one percent (.03%) of state expenditures on goods and services was spent with minority-owned businesses in 2002;

(4) Small and minority-owned businesses employ forty-eight and nine-tenths percent (48.9%) of the state's total employment;

(5) Seventy-two percent (72%) of all current jobs in the Delta Region of Arkansas, Louisiana, and Mississippi are provided through small and minority-owned businesses;

(6) An increase of four thousand (4,000) jobs in small, minority-owned, and medium-sized businesses would radiate through the state to result in the creation of forty-eight thousand (48,000) new jobs;

(7) Expanding the profitability and spending power of these businesses will allow them to provide employment opportunities and to increase economic growth and development within Arkansas communities;

(8) Expansion of economic opportunity will reduce unemployment and the need for state-supported social welfare programs, while increasing the state tax base and the appeal to minority-owned businesses from other businesses within their industry for raw materials and production support; and

(9) Increased economic output and employment by minority-owned businesses will have a positive rippling impact throughout the state.

(b) This chapter is intended to expand economic opportunities for Arkansas' minority communities but is not intended to establish any quota system or program.

History. Acts 2003, No. 1814, § 1.

25-36-102. Definitions.

For the purposes of this chapter:

(1) "Minority" means the same as in § 1-2-503; and

(2) "State agency" means any office, department, board, commission, bureau, division, public corporation, agency, institution of higher learning, or instrumentality of this state.

History. Acts 2003, No. 1814, § 1.

25-36-103. Agency contracting — Diversity.

(a) A state agency shall include in all requests for proposals and requests for qualifications, language that encourages minority participation in each request for proposals and request for qualifications issued by the state agency.

(b)(1) State agency requests for proposals and requests for qualifications shall take into consideration minority inclusion in the proposed project.

(2) Requests for proposals and requests for qualifications shall provide that an applicant unable to include minority-owned businesses may explain the circumstances preventing minority inclusion.

History. Acts 2003, No. 1814, § 1.

25-36-104. Data recording and tracking.

(a)(1) The State Procurement Director shall track data regarding minority participation in state contracts that exceed fifty thousand dollars (\$50,000).

(2) The data shall include, but not be limited to, information regarding:

(A) The dollar amount for each contract awarded to a minority-owned business;

(B) The total dollar amount spent on contracts by each state agency; and

(C) The number and percentage of minority-owned businesses awarded contracts by the agency.

(b) The director shall report the data required under subsection (a) of this section semiannually to the Governor and to the cochairs of the Legislative Council and to the Legislative Joint Auditing Committee and the Minority Business Advisory Council.

(c)(1) Each state agency shall include in its budget report to the Joint Budget Committee a listing of all contracts in amounts exceeding fifty thousand dollars (\$50,000) awarded to minority-owned businesses.

(2) The vice president or vice chancellor for finance of each state college and university shall include in his or her budget report to the Joint Budget Committee a listing of all contracts in amounts exceeding fifty thousand dollars (\$50,000) awarded to minority-owned businesses.

(d) The director shall promulgate rules and regulations necessary for the implementation of this chapter.

History. Acts 2003, No. 1814, § 1; substituted “fifty thousand dollars 2005, No. 1962, § 113; 2013, No. 1189, (\$50,000)” for “twenty-five thousand dollars § 6. (\$25,000)” in (a)(1), (c)(1) and (c)(2).

Amendments. The 2013 amendment

CHAPTER 37**BIOBASED PRODUCTS ACT OF 2005****SECTION.**

25-37-101. Definitions.

25-37-102. Procurement of biobased products.

25-37-101. Definitions.

As used in this chapter:

(1) “Biobased product” means a product determined by the United States Secretary of Agriculture to be a commercial or industrial product, other than food or feed, that is composed, in whole or in significant part, of biological products or renewable domestic agricultural materials, including plant, animal, and marine materials or forestry materials;

(2)(A) "Biomass" means any organic material that is available on a renewable or recurring basis.

(B) "Biomass" includes:

- (i) Agricultural crops;
- (ii) Trees grown for energy production;
- (iii) Wood waste and wood residues;
- (iv) Plants, including aquatic plants and grasses;
- (v) Residues;
- (vi) Fibers;
- (vii) Animal wastes and other waste materials; and
- (viii) Fats, oils, and greases, including recycled fats, oils, and greases.

(C) "Biomass" does not include:

- (i) Paper that is commonly recycled; or
- (ii) Unsegregated solid waste; and

(3) "State agency" means any agency, institution, authority, department, board, commission, bureau, council, or other agency of the state supported by appropriation of state or federal funds, including, but not limited to:

- (A) The constitutional departments of the state;
- (B) The elected constitutional offices of the state;
- (C) The General Assembly, including, but not limited to:
 - (i) The Legislative Council;
 - (ii) The Legislative Joint Auditing Committee; and
 - (iii) Any supporting agencies and bureaus of the Legislative Council and the Legislative Joint Auditing Committee;
- (D) The Arkansas Supreme Court;
- (E) The Court of Appeals;
- (F) The circuit courts;
- (G) The prosecuting attorneys; and
- (H) The Administrative Office of the Courts.

History. Acts 2005, No. 542, § 1.

25-37-102. Procurement of biobased products.

(a) After the date specified in the guidelines prepared under subsection (b) of this section, each state agency that procures any items designated in the guidelines shall give preference in making procurement decisions to the items composed of the highest percentage of biobased products that are:

- (1) Practicable; and
 - (2) Consistent with maintaining a satisfactory level of competition.
- (b)(1)(A) The Office of State Procurement of the Department of Finance and Administration shall prepare and, from time to time, revise guidelines for the use of procuring agencies in complying with the requirements of this section.

(B) The guidelines shall:

(i) Be developed using federal guidelines that designate biobased products that qualify for preferred procurement as authorized by section 9002 of the Farm Security and Rural Investment Act of 2002, 7 U.S.C. § 8102, as those federal guidelines and that federal law existed on January 1, 2005;

(ii) Provide direct or indirect access to information regarding items identified or certified by federal rules, as they existed on January 1, 2005, that are or can be produced with biobased products and whose procurement by procuring agencies will carry out the objectives of this section;

(iii) Set forth recommended practices with respect to the procurement of biobased products and items containing biobased materials; and

(iv) Provide direct or indirect access to information on availability, relative price, performance, and environmental and public health benefits of biobased materials and items.

(2) The office shall prepare final procurement guidelines under this section within one hundred eighty (180) days based on the federal regulations pursuant to 7 U.S.C. § 8102 as they existed on January 1, 2005.

(c)(1) The office shall implement the requirements of this section.

(2) Every two (2) years beginning on or before June 30, 2006, the office shall report to the Joint Budget Committee during each regular session of the General Assembly on:

(A) Actions taken by state agencies with regard to purchases of biobased products; and

(B) Progress made in the implementation of this section, including agency compliance with subsection (b) of this section.

(3)(A) Every two (2) years, on or before March 31, each state agency shall report to the office on the effectiveness of the agency's procurement program.

(B) The office shall prepare and make available to each state agency a procedure for presenting the report required under subdivision (c)(3)(A) of this section.

History. Acts 2005, No. 542, § 1.

CHAPTER 38

ARKANSAS AGRICULTURE DEPARTMENT

SUBCHAPTER.

1. [RESERVED.]

2. ARKANSAS AGRICULTURE DEPARTMENT.

SUBCHAPTER 1 — [RESERVED]

[Reserved]

SUBCHAPTER 2 — ARKANSAS AGRICULTURE DEPARTMENT

SECTION.

- 25-38-201. Legislative findings.
- 25-38-202. Creation — Appointment of secretary.
- 25-38-203. Arkansas Agriculture Department — Powers and duties.
- 25-38-204. Type 1 transfers of various agricultural agencies.
- 25-38-205. The Division of Agricultural Development of the Arkansas Development Finance

SECTION.

- Authority — Coordination of marketing programs.
- 25-38-206. Transfer of human resources and accounting offices.
- 25-38-207. Arkansas Agriculture Board — Creation — Members — Organization — Duties.
- 25-38-208. Agencies not affected.
- 25-38-209. Transfer of the Division of Land Surveys.
- 25-38-210. Agricultural exchanges.

A.C.R.C. Notes. Acts 2013, No. 434, § 47, provided: "ALLOCATION RESTRICTIONS. The Secretary of the Arkansas Department of Agriculture shall at no time designate general revenue allocations to the State Plant Board, the Arkansas Livestock and Poultry Commission and the Arkansas Forestry Commission at a level less than the revenue distribution provided in the Official Forecast of state general revenue in effect for each of those agencies."

"The provisions of this section shall be in effect only from July 1, 2013 through June 30, 2014."

Effective Dates. Acts 2007, No. 533, § 2: Mar. 28, 2007. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this act on July 1, 2007, is essential to the operations of the Arkansas Development Finance Authority and the Arkansas Agriculture Department both of whose fiscal years begin on July 1, and that in the event of an extension of the Regular Session, the delay in the effective date of this act beyond July 1, 2007, could work irreparable harm upon

the proper administration and provision of essential governmental programs. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2007, No. 752, § 6: July 1, 2007. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act transfers the Division of Land Surveys in the Office of Commissioner of State Lands to the Arkansas Agriculture Department; that to effectively administer this act the transition should occur at the beginning of the next fiscal year; and that the effectiveness of this act on July 1, 2007, is essential to the operation of the agencies. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2007."

25-38-201. Legislative findings.

The General Assembly finds that:

(1) Agriculture accounts for thirteen billion dollars (\$13,000,000,000) or one-fifth ($\frac{1}{5}$) of the gross state product of Arkansas;

(2) Two hundred ninety-one thousand (291,000) Arkansas jobs directly involve or operate in support of agriculture;

(3) Agriculture and agriculture-related jobs account for twenty-three percent (23%) of all employment in Arkansas;

(4) Responsibility for supporting agriculture in Arkansas is spread across six (6) state agencies;

(5) Marketing of the agricultural products of Arkansas is made extremely difficult by the diffusion of responsibility across six (6) state agencies; and

(6) Marketing of the agricultural products of Arkansas would be vastly improved if a central office were devoted to creating, publicizing, and sustaining an information network for Arkansas farmers and ranchers.

History. Acts 2005, No. 1978, § 1.

25-38-202. Creation — Appointment of secretary.

(a) There is created the Arkansas Agriculture Department.

(b)(1) The executive head of the department shall be the Secretary of the Arkansas Agriculture Department.

(2) The secretary shall be selected by the Arkansas Agriculture Board, and the name shall be submitted to the Governor for confirmation. The secretary shall serve at the pleasure of the Governor.

History. Acts 2005, No. 1978, § 2.

25-38-203. Arkansas Agriculture Department — Powers and duties.

The Arkansas Agriculture Department shall:

(1) Administer the departments, institutions, other agencies, or parts of departments, institutions, or other agencies transferred to the department under §§ 25-38-204 and 25-38-205;

(2) Coordinate all existing programs and create any new programs that will enhance the marketing of the state's agricultural products to intrastate, national, and international markets;

(3) Establish a clearinghouse for collecting, correlating, analyzing, and interpreting marketing and educational information and data concerning needs of and resources for agriculture, aquaculture, horticulture, forestry, and kindred industries;

(4) Develop a website devoted to marketing and education concerning agriculture, aquaculture, horticulture, forestry, and kindred industries, including a distinctive logo publicizing products as "Grown in Arkansas";

(5) Encourage the organization of neighborhood and county agricultural clubs and associations;

(6) Coordinate the various activities of the department with those of the federal government and other states on matters pertaining to agriculture, aquaculture, horticulture, forestry, and kindred industries and enter into agreements for that purpose;

(7) Coordinate with existing programs concerning agriculture, aquaculture, horticulture, forestry, and kindred industries with the University of Arkansas Division of Agriculture;

(8) Make all contracts and grants and employ, to the extent funds are available, such personnel as may be necessary to carry out the purposes of this chapter; and

(9) Assist other departments, agencies, and institutions of the state and federal governments, when so requested, by performing services in conformity with the purposes of this chapter.

History. Acts 2005, No. 1978, § 2.

25-38-204. Type 1 transfers of various agricultural agencies.

The following departments, institutions, other agencies, or parts thereof, are transferred to the Arkansas Agriculture Department by a type 1 transfer, as provided for in § 25-2-104, under which the departments, institutions, other agencies, or parts thereof, shall be administered under the direction and supervision of that principal department, but shall retain the same prescribed statutory powers, authorities, duties, and functions as they had before the transfer:

(1) Abandoned Pesticide Advisory Board, created under § 8-7-1204;

(2) Arkansas Forestry Commission, created under § 15-31-101;

(3) Arkansas Livestock and Poultry Commission, created under § 2-33-101;

(4) State Plant Board, created under § 2-16-206; and

(5) Aquaculture business enterprise facilities and operations with the Arkansas Development Finance Authority.

History. Acts 2005, No. 1978, § 2;
2007, No. 533, § 1.

25-38-205. The Division of Agricultural Development of the Arkansas Development Finance Authority — Coordination of marketing programs.

The Division of Agriculture Development of the Arkansas Development Finance Authority, created under § 15-5-802, shall coordinate all aspects of its work concerning the marketing of the agricultural products of Arkansas with the Secretary of the Arkansas Agriculture Department.

History. Acts 2005, No. 1978, § 2.

25-38-206. Transfer of human resources and accounting offices.

(a) The human resource and accounting operations of the following boards and commissions shall be administered under the direction and supervision of the Arkansas Agriculture Department:

- (1) The State Plant Board;
- (2) The Arkansas Livestock and Poultry Commission; and
- (3) The Arkansas Forestry Commission.

(b) The boards and commissions subject to transfer of the administration of human resource and accounting operations under subsection (a) of this section shall make available to the department all records of whatever type concerning their human resource and accounting operations.

History. Acts 2005, No. 1978, § 2.

25-38-207. Arkansas Agriculture Board — Creation — Members — Organization — Duties.

(a) The Arkansas Agriculture Board is created to consist of twenty-one (21) voting members and eight (8) nonvoting ex officio members, as follows:

(1) Ten (10) members, appointed by their respective boards, who sit on one (1) of the following boards or commissions:

(A) Two (2) members, at least one (1) of whom shall be actively engaged in farming, from the State Plant Board;

(B) Two (2) members, at least one (1) of whom shall be actively engaged in farming, from the Arkansas Livestock and Poultry Commission;

(C) Two (2) members from the Arkansas Natural Resources Commission;

(D) Two (2) members from the Arkansas Forestry Commission;

(E) One (1) member actively engaged in farming from the Arkansas Rural Development Commission; and

(F) One (1) member from the Arkansas Young and Beginning Farmer Advisory Board chosen by the Arkansas Young and Beginning Farmer Advisory Board;

(2) Eleven (11) members, appointed by the Governor with the consent of the Senate as follows:

(A) Three (3) members who are actively engaged in growing rice, cotton, or small grains, including, but not limited to, corn, sorghum, soybeans, and wheat;

(B) Three (3) members who are actively involved in at least one (1) of the following areas of the agricultural industry:

(i) Plant food, agricultural chemicals, or seed merchandising;

(ii) Meat processing;

(iii) Grain processing;

(iv) Domestic food products, processing, and global marketing;

(v) Aquaculture; and

(vi) The Arkansas Livestock Marketing Association; and

(C) Five (5) members as follows:

- (i) One (1) member who is actively engaged in producing beef;
- (ii) One (1) member who is actively engaged in producing swine;
- (iii) One (1) member who is actively engaged in dairy farming;
- (iv) One (1) member who is actively engaged in producing poultry;

and

(v) One (1) member who is actively engaged in producing wine, grapes, fruits, or vegetables; and

(3) Eight (8) nonvoting ex officio members, as follows:

(A) The Vice President for Agriculture of the University of Arkansas System;

(B) The Dean of Agriculture of Arkansas State University;

(C) The Dean of Agriculture of the University of Arkansas at Pine Bluff;

(D) A representative of the University of Arkansas for Medical Sciences who is actively involved in nutrition teaching or research, or both;

(E) A representative of the University of Arkansas at Monticello;

(F) The President of the Arkansas Association of Conservation Districts;

(G) A representative of Southern Arkansas University; and

(H) A representative of Arkansas Tech University.

(b) The board shall advise the Secretary of the Arkansas Agriculture Department on all matters concerning agriculture, aquaculture, horticulture, and kindred industries.

(c) The board shall meet at least quarterly and shall fix a regular date for the quarterly meeting.

(d)(1) The members of the board appointed by the Governor shall serve staggered terms of four (4) years, to be determined at the first meeting of the board by lot in a manner to result, as far as possible, in an equal number of terms expiring each year.

(2) The members appointed by the Governor shall serve no more than two (2) terms.

(e)(1) Vacancies due to death, resignation, refusal to serve, or other causes among members of the board appointed by the Governor shall be filled by appointment by the Governor of a qualified person to serve the remainder of the unexpired term.

(2) A person so appointed is eligible for appointment to a subsequent full term on the board.

(g)(1) State agency members of the board shall receive no additional salary or compensation for their services as members of the committee, but they may receive expense reimbursement in accordance with § 25-16-902, to the extent funds are available.

(2) The members appointed by the Governor may receive expense reimbursement from funds made available for that purpose in accordance with § 25-16-902, to the extent funds are available.

History. Acts 2005, No. 1978, § 2;
2007, No. 469, § 1.

25-38-208. Agencies not affected.

The establishment of the Arkansas Agriculture Department shall in no way affect the duties, powers, or operations of the following boards and councils:

- (1) Arkansas Beef Council;
- (2) Arkansas Catfish Promotion Board;
- (3) Arkansas Corn and Grain Sorghum Promotion Board;
- (4) Arkansas Rice Research and Promotion Board;
- (5) Arkansas Soybean Promotion Board; or
- (6) Arkansas Wheat Promotion Board.

History. Acts 2005, No. 1978, § 2.

25-38-209. Transfer of the Division of Land Surveys.

(a)(1) Effective July 1, 2007, the Division of Land Surveys in the Office of Commissioner of State Lands is transferred to the Arkansas Agriculture Department and shall be administered by the Secretary of the Arkansas Agriculture Department.

(2) All authority, powers, duties, functions, records, authorized positions, property, unexpended balances of appropriations, allocations, or other funds of the Division of Land Surveys are transferred to the Arkansas Agriculture Department.

(b) In order to protect the Division of Land Surveys, to allow for continuation of necessary procedures, and to provide for a smooth transition to the Department of Agriculture, the Secretary of the Arkansas Agriculture Department may not realign the functions and records of the Division of Land Surveys of the Arkansas Agriculture Department before July 1, 2008.

History. Acts 2007, No. 752, § 1.

25-38-210. Agricultural exchanges.

The Arkansas Agriculture Department shall:

(1) Evaluate the potential economic benefits to Arkansas and Arkansas farmers of entering into agricultural exchanges with Israel and other countries that will foster the development of trade, mutual assistance, and business relations between Arkansas and the other country; and

(2) Annually report the department's findings under subdivision (1) of this section to the House Committee on Agriculture, Forestry, and Economic Development and the Senate Committee on Agriculture, Forestry, and Economic Development.

History. Acts 2013, No. 1501, § 1.

CHAPTER 39

GOVERNMENT EFFICIENCY AND ACCOUNTABILITY ACT

SECTION.

25-39-101 — 25-39-303. [Repealed.]

A.C.R.C. Notes. Acts 2007, No. 153, § 1, provided: "The General Assembly finds that: (1) The Government Efficiency and Accountability Act, Arkansas Code § 25-39-101 et seq., called for a review of the efficient operation of state government; (2) The Government Efficiency and Accountability Subcommittee of the House and Senate Interim Committees on State Agencies and Governmental Affairs conducted a thorough review of the agencies scheduled for abolishment on June 30, 2007; and (3) The review of state agencies conducted by the Government Efficiency and Accountability Subcommittee of the House and Senate Interim Committees on State Agencies and Governmental Affairs satisfied the intent of the Government Efficiency and Accountability Act and the act has served its purpose."

Acts 2007, No. 153, § 2, provided: "The following state agencies, scheduled to be abolished on June 30, 2007 under § 25-39-302(a), are continued: (1) Department of Health and Human Services, created by § 25-10-101, including without limitation the following: (A) Division of Aging and Adult Services, created by § 25-10-102; (B) Division of Children and Family Services, created by § 25-10-102; (C) Division of Youth Services, created by § 9-28-202; (D) Division of Medical Services, created by § 25-10-102; (E) Division of Behavioral Health, created by § 25-10-102; (F) Division of Developmental Disabilities Services, created by § 25-10-102; (G) Division of County Operations, created by § 25-10-102; (H) Division of Volunteerism, created by §§ 25-10-102 and 25-10-128; (I) Division of State Services for the Blind, created by § 25-10-201, including without limitation the Board of the Division of State Services for the Blind, created by § 25-10-205; (J) Adult Protective Services Unit; (K) Death Review Committee; (L) Department of Health and Human Ser-

vices State Institutional System Board, created by § 25-10-402; (M) Department of Health and Human Services State Institutional System, created by § 25-10-401; (N) Division of Administrative Services, created by § 25-10-102; (O) Division of Child Care and Early Childhood Education, created by § 20-78-205; (P) Fraud Prevention Unit; (Q) Office of Long-Term Care, created by § 20-10-202; (R) Office of Minority Mental Health, created by § 25-10-122; and (S) Senior Arkansans Hall of Fame, created by § 13-11-101; (2) Division of Health of the Department of Health and Human Services, created by § 25-9-101, including without limitation the following: (A) Accounting Division; (B) Bureau of Alcohol and Drug Abuse Prevention, created by § 20-64-601; (C) Center for Health Statistics; (D) Division of Chronic Disease and Disability Prevention; (E) Division of Emergency Medical Services; (F) Division of Environmental Health Protection; (G) Division of Health Care Facility Services; (H) Division of Pharmacy Services and Drug Control; (I) Department of Vital Records, created by § 20-18-201; (J) Emergency Medical Services Advisory Council, created by § 20-13-205; (K) Environmental Program Section; (L) Home Health Care Service Agency Advisory Council, created by § 20-10-804; (M) Individual Sewage Disposal Systems Advisory Committee, created by § 14-229-101; (N) Office of Perinatal Health, created by § 20-7-116; (O) Office of Alcohol Testing; (P) State Hospice Office, created by § 20-7-117; and (Q) Trauma Registry, created by § 20-13-806; (3) Abandoned Pesticide Advisory Board, created by § 8-7-1204; (4) Abstracters' Board of Examiners, created by § 17-11-201; (5) Advisory Committee for Hospital Pharmacies, created by § 17-92-603; (6) Advisory Committee on Petroleum Storage Tanks, created by § 8-7-904; (7) Advi-

sory Council for the Education of Gifted and Talented Children, created by § 6-42-104; (8) Advisory Council of the Arkansas Arts Council, created by § 13-8-104; (9) Amusement Ride Safety Advisory Board, created by § 23-89-518; (10) Arkansas Alcohol and Drug Abuse Coordinating Council, created by § 20-64-1002; (11) Arkansas Alternative Dispute Resolution Commission, created by § 16-7-102; (12) Arkansas Appraiser Licensing and Certification Board, created by § 17-14-201; (13) Arkansas Archeological Survey, created by § 13-6-201; (14) Arkansas Arts Council, created by § 13-8-103; (15) Arkansas Aviation and Aerospace Commission, created by § 15-4-1501; (16) Arkansas Beef Council, created by § 2-35-303; (17) Arkansas Biosciences Institute, created by § 19-12-115; (18) Arkansas Board of Dispensing Opticians, created by § 17-89-201; (19) Arkansas Board of Examiners in Counseling, created by § 17-27-201; (20) Arkansas Board of Health Education, created by § 17-53-201; (21) Arkansas Board of Hearing Instrument Dispensers, created by § 17-84-201; (22) Arkansas Board of Podiatric Medicine, created by § 17-96-201; (23) Arkansas Board of Private Investigators and Private Security Agencies, created by § 17-40-201; (24) Arkansas Building Authority, created by § 22-2-104, including without limitation the following: (A) Building Operations Section, created by § 22-2-107(a)(2); (B) Construction Section, created by § 22-2-107(a)(1); (C) Design Review Section, created by § 22-2-107(a)(3); and (D) Real Estate Services Section, created by § 22-2-107(a)(4); (25) Arkansas Building Authority Council, created by § 22-2-106; (26) Arkansas Catfish Promotion Board, created by § 2-9-103; (27) Arkansas Cemetery Board, created by § 20-17-1004; (28) Arkansas Child Abuse/Rape/Domestic Violence Commission, created by § 20-82-201; (29) Arkansas Coalition Against Domestic Violence; (30) Arkansas Coalition Against Sexual Assault; (31) Arkansas Code Revision Commission, created by § 1-2-301; (32) Arkansas Commission on Law Enforcement Standards and Training, created by § 12-9-103; (33) Arkansas Comprehensive Health Insurance Pool, created by § 23-79-504, including without limitation the Board of Directors of the Arkansas Comprehensive Health Insurance Pool, created by § 23-79-504; (34)

Arkansas Coordinate System 1983, created by § 15-21-301; (35) Arkansas Corn and Grain Sorghum Promotion Board, created by § 2-20-804; (36) Arkansas Crime Information Center, created by § 12-12-201, including without limitation: (A) Arkansas Crime Prevention Office, created by § 12-12-204; and (B) Supervisory Board for the Arkansas Crime Information Center, created by § 12-12-202; (37) Arkansas Criminal Detention Facilities Board; (38) Arkansas Deaf and Hearing Impaired Telecommunications Services Corporation, created by § 25-29-101; (39) Arkansas Delta Development Commission, created by § 15-4-2602; (40) Arkansas Department of Aeronautics, created by § 27-115-101; (41) Arkansas Department of Emergency Management, created by § 12-75-109, including without limitation: (A) Arkansas Fire Protection Services Resources Plan, created by § 20-22-1006; (B) State Office of Hazardous Materials Emergency Management, created by § 12-84-104; and (C) Office of Fire Protection Services, created by § 20-22-805; (42) Arkansas Dietetics Licensing Board, created by § 17-83-201; (43) Arkansas District Judge Retirement System, created by § 24-8-801, including without limitation the Board of Trustees of the Arkansas District Judge Retirement System, created by § 24-8-803; (44) Arkansas Early Childhood Commission, created by § 20-78-501; (45) Arkansas Earthquake Authority, created by § 23-102-104; (46) Arkansas Educational Television Commission, created by § 6-3-101; (47) Department of Workforce Services, created by § 11-10-301, including without limitation: (A) Board of Review, created by § 11-10-523; and (B) Division of the State New Hire Registry, created by § 11-10-901; (48) Arkansas Entertainers Hall of Fame Board, created by § 13-9-101; (49) Arkansas Ethics Commission, created by § 7-6-217, resulting from Initiated Act 1 of 1990; (50) Arkansas Fair Housing Commission, created by § 16-123-303; (51) Arkansas Fallen Fire Fighters' Memorial Board; (52) Arkansas Fire and Police Pension Review Board, created by § 24-11-203; (53) Arkansas Fire Ant Advisory Board, created by § 2-16-701; and (54) Arkansas Fire Protection Licensing Board, created by § 20-22-606."

Effective Dates. Acts 2007, No. 153, § 5: February 28, 2007. Emergency clause

provided: "It is found and determined by the General Assembly of the State of Arkansas that this act calls for the continuation and abolishment of various state agencies and that allowing the provisions of the act to become effective immediately will promote the efficient and effective operation of the agencies affected by the act. Therefore, an emergency is declared to exist and this act being necessary for

the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

25-39-101 — 25-39-303. [Repealed.]

Publisher's Notes. This chapter was repealed by Acts 2007, No. 153, § 4. The chapter was derived from the following sources:

25-39-101. Acts 2005, No. 2218, § 1.
 25-39-102. Acts 2005, No. 2218, § 2.
 25-39-103. Acts 2005, No. 2218, § 2.
 25-39-201. Acts 2005, No. 2218, § 2.
 25-39-202. Acts 2005, No. 2218, § 2.
 25-39-203. Acts 2005, No. 2218, § 2.
 25-39-204. Acts 2005, No. 2218, § 2.
 25-39-205. Acts 2005, No. 2218, § 2.
 25-39-206. Acts 2005, No. 2218, § 2.
 25-39-207. Acts 2005, No. 2218, § 2.
 25-39-208. Acts 2005, No. 2218, § 2.

25-39-209. Acts 2005, No. 2218, § 2.
 25-39-210. Acts 2005, No. 2218, § 2.
 25-39-211. Acts 2005, No. 2218, § 2.
 25-39-212. Acts 2005, No. 2218, § 2.
 25-39-213. Acts 2005, No. 2218, § 2.
 25-39-214. Acts 2005, No. 2218, § 2.
 25-39-215. Acts 2005, No. 2218, § 2.
 25-39-216. Acts 2005, No. 2218, § 2.
 25-39-217. Acts 2005, No. 2218, § 2.
 25-39-218. Acts 2005, No. 2218, § 2.
 25-39-219. Acts 2005, No. 2218, § 2.
 25-39-220. Acts 2005, No. 2218, § 2.
 25-39-301. Acts 2005, No. 2252, § 1.
 25-39-302. Acts 2005, No. 2252, § 2.
 25-39-303. Acts 2005, No. 2252, § 3.

CHAPTER 40

ARKANSAS TASK FORCE ON HISPANIC AFFAIRS

SECTION.

25-40-101 — 25-40-105. [Repealed.]

25-40-101 — 25-40-105. [Repealed.]

Publisher's Notes. This chapter was repealed by Acts 2009, No. 1484, § 11. The chapter was derived from the following sources:

25-40-101. Acts 2005, No. 2290, § 1.

25-40-102. Acts 2005, No. 2290, § 1.
 25-40-103. Acts 2005, No. 2290, § 1.
 25-40-104. Acts 2005, No. 2290, § 1.
 25-40-105. Acts 2005, No. 2290, § 1.

CHAPTER 41

DAISY GATSON BATES HOLIDAY COMMITTEE

SECTION.

25-41-101. Committee created — Members.

SECTION.

25-41-102. Duties.
 25-41-103. Powers.

25-41-101. Committee created — Members.

(a) There is created a committee to be known as the “Daisy Gatson Bates Holiday Committee”.

(b) The committee shall consist of nine (9) members:

(1) Three (3) members of the general public who are residents of Arkansas and shall represent the state at large, to be appointed by the Governor;

(2) Three (3) members shall be appointed by the Speaker of the House of Representatives, two (2) of whom shall represent and be residents of the First and Second Congressional Districts of Arkansas, respectively, and a third who shall represent the state at large; and

(3) Three (3) members shall be appointed by the President Pro Tempore of the Senate, two (2) of whom shall represent and be residents of the Third and Fourth Congressional Districts of Arkansas, respectively, and a third who shall represent the state at large.

(c)(1) Members shall serve for a term of three (3) years.

(2) No member of the committee shall serve more than two (2) consecutive terms.

(3) A vacancy in the membership shall be filled for the balance of the unexpired term in the same manner as the original appointment was made.

(d) The Governor shall designate one (1) member appointed from the state at large as the chairperson of the committee.

(e) A majority of the committee shall constitute a quorum for the transaction of business.

(f)(1) Members of the committee shall serve without compensation but, to the extent moneys are appropriated by the General Assembly, may receive expense reimbursement in accordance with § 25-16-902 and may receive stipends in accordance with § 25-16-903.

(2) However, members of the committee shall not receive stipend payments under § 25-16-903 for more than four (4) meetings in a twelve-month period.

History. Acts 2007, No. 1583, §§ 1.

A.C.R.C. Notes. Acts 2007, No. 1583, § 2, provided:

“At the first meeting of the committee, the members shall draw lots for terms so

that three (3) members will serve for a term of one (1) year; three (3) members will serve for a term of two (2) years; and three (3) members will serve for a term of three (3) years.”

25-41-102. Duties.

(a) The Daisy Gatson Bates Holiday Committee shall have the following duties:

(1) To promote among the people of Arkansas, by appropriate activities, both awareness and appreciation of the civil rights movement and advocacy of the principles and legacy of Ms. Daisy Gatson Bates;

(2) To promote principles of mentoring and leadership;

(3) To promote racial harmony, understanding, respect, and goodwill among all citizens of Arkansas; and

(4) To develop, coordinate, and advise the Governor and the General Assembly of appropriate ceremonies and activities throughout the state relating to the observance of the Daisy Gatson Bates Holiday.

(b) The committee may receive donations and contributions from individuals and public and private organizations in order to carry out its responsibilities.

History. Acts 2007, No. 1583, § 1.

25-41-103. Powers.

The Daisy Gatson Bates Holiday Committee may employ any staff and consultants if an appropriation is made for that purpose by the General Assembly and may fix the compensation, duties, authority, and responsibilities of the committee’s employees.

History. Acts 2007, No. 1583, § 1.

CHAPTER 42

HEALTH INFORMATION TECHNOLOGY

SECTION.	SECTION.
25-42-101. Purpose.	25-42-104. Definitions.
25-42-102. Policy.	25-42-105. Duties and responsibilities.
25-42-103. Office of Health Information Technology — Creation.	25-42-106. State Health Alliance for Records Exchange — Duties.

A.C.R.C. Notes. Acts 2013, No. 1235, § 2, provided: “RESTRICTIONS.

“(a) No grant may be awarded nor obligations otherwise incurred in relation to the project or projects described herein to any entity unless the entity meets the following requirements:

“(1) The entity is based in the state of Arkansas

“(2) The entity has been in operation for at least 10 years

“(3) The entity is certified for Meaningful Use by the Office of the National Coordinator for Health Information Technology (ONC) — Authorized Testing and Certifying Body (ATCB) for Electronic Health Record (EHR) Certification

“(4) The entity is capable of transmitting medical images electronically and in

a manner that is compliant with the Health Insurance Portability and Accountability Act (HIPAA) Act of 1996 and Health Information Technology for Economic and Clinical Health (HITECH) Act of 2009

“(5) The entity offers continuing education opportunities and

“(6) The entity offers HIPAA compliant messaging, collaboration and referrals.

“(b) Funding for this appropriation shall be awarded and disbursed no later than sixty (60) days after the funds are released to the Office of Health Information Technology for the purposes state herein.

“The provisions of this section shall be in effect only from July 1, 2013 through June 30, 2014.”

25-42-101. Purpose.

The purpose of this chapter is to:

- (1) Establish the Office of Health Information Technology; and
- (2) Authorize the Office of Health Information Technology to form a nonprofit corporation to be known as the State Health Alliance for Records Exchange.

History. Acts 2011, No. 891, § 1.

25-42-102. Policy.

(a) The coordination of health information technology activities throughout Arkansas by the Office of Health Information Technology is necessary to obtain the maximum potential value from the investment of federal and state resources to increase the use of health information technology.

(b) The exchange of health information made possible by the State Health Alliance for Records Exchange can improve the quality of health of Arkansas citizens by reducing the potential for medical errors, reducing the incidence of redundant tests and procedures, improving patient safety, and making the delivery of healthcare services more efficient and affordable.

(c) The Office of Health Information Technology and the State Health Alliance for Records Exchange shall respect and safeguard each person's privacy interests in his or her health and medical information.

History. Acts 2011, No. 891, § 1.

25-42-103. Office of Health Information Technology — Creation.

The Office of Health Information Technology is created.

History. Acts 2011, No. 891, § 1.

25-42-104. Definitions.

As used in this chapter:

(1) "Agency" means any agency, board, commission, public instrumentality, political subdivision, or any of the foregoing entities acting on behalf of the State of Arkansas that store, gather, or generate health information;

(2) "Deidentified" means the same as the meaning under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191;

(3) "Health information" means any information, whether oral or recorded in any form or medium, that:

(A) Is created or received by:

(i) A provider of health care;

(ii) A health plan;

(iii) A public health authority;

(iv) An employer;

(v) A health insurer;

(vi) A school or university; or

(vii) A health care clearinghouse; and

(B) Relates to the:

(i) Past, present, or future physical or mental health or condition of an individual;

(ii) Provision of health care to an individual; or

(iii) Past, present, or future payment for the provision of health care to an individual;

(4) "Health information exchange" means the electronic movement of health-related information among organizations according to nationally recognized standards;

(5) "Health information technology" means the application of information processing involving both computer hardware and software and other technology devices that deal with the storage, retrieval, sharing, and use of health care information, data, and knowledge for communication and decision-making;

(6) "Identified" means the same as the meaning under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191;

(7) "Nonprofit corporation" means a corporation no part of the income of which is distributable to its members, directors, or officers as under the Arkansas Nonprofit Corporation Act of 1993, § 4-33-101 et seq.;

(8) "State Health Alliance for Records Exchange" means the entity responsible for the processes and procedures that enable the electronic exchange of interoperable health information in Arkansas.

History. Acts 2011, No. 891, § 1.

25-42-105. Duties and responsibilities.

(a) The Office of Health Information Technology shall coordinate the health information technology initiatives of the state with relevant executive branch agencies, including without limitation state boards, commissions, nonprofit corporations, and institutions of higher education.

(b) The Office of Health Information Technology Coordinator shall serve as the executive officer of the office.

(c) The office shall:

(1) Assure the effective coordination and collaboration of health information technology planning, development, implementation, and financing;

(2) Review all health information technology-related grant applications before submission to funding entities;

(3) Accept, receive, retain, disburse, and administer any state special or general revenue funds or federal funds specifically appropriated for health information technology;

(4) Make contracts and execute all instruments necessary or convenient for carrying out its business;

(5) Adopt rules necessary to carry out the policies and objectives of this chapter;

(6) Plan, establish, and operate the State Health Alliance for Records Exchange until the time when a nonprofit corporation is formed to operate the State Health Alliance for Records Exchange and operational responsibility and authority for the State Health Alliance for Records Exchange is transferred to that nonprofit; and

(7)(A) Establish reasonable fees or charges for the use of the State Health Alliance for Records Exchange to fund the operational costs of the State Health Alliance for Records Exchange and the office.

(B) Fees or charges established under subdivision (c)(7)(A) of this section shall be set with the input and guidance of the users of the State Health Alliance for Records Exchange, stakeholders, and other interested parties.

(C) Fees or charges established under subdivision (c)(7)(A) of this section shall not exceed the total cost of operating the State Health Alliance for Records Exchange, not including staffing costs for the State Health Alliance for Records Exchange and the office.

(D) Users of data under this chapter shall be charged in a manner that is proportional to their use of the State Health Alliance for Records Exchange.

(E) Revenue generated by the fees or charges under subdivision (c)(7) of this section shall be deposited into the Health Information Technology Fund, § 19-5-1244.

History. Acts 2011, No. 891, § 1.

25-42-106. State Health Alliance for Records Exchange — Duties.

(a) The State Health Alliance For Records Exchange shall:

(1) Serve as the official health information exchange for the State of Arkansas;

(2) Be organized for the purpose of improving the health of Arkansans by:

(A) Promoting efficient and effective communication among multiple health care providers, including without limitation hospitals, physicians, payers, employers, pharmacies, laboratories, and other health care entities;

(B) Creating efficiencies in health care costs by eliminating redundancy in data capture and storage and reducing administrative, billing, and data collection costs;

(C) Creating the ability to monitor community health status; and

(D) Providing reliable information to health care consumers and purchasers regarding the quality and cost-effectiveness of health care, health plans, and health care providers;

(3)(A) Until the nonprofit corporation is formed, the State Health Alliance for Records Exchange shall be established and operated by the Office of Health Information Technology with the advice of the Health Information Exchange Council, consisting of the following members appointed by the Governor:

- (i) The Office of Health Information Technology Coordinator;
- (ii) A representative of the Department of Finance and Administration;
- (iii) A representative of the Department of Health;
- (iv) A representative of the Department of Human Services;
- (v) A representative of the Department of Information Systems;
- (vi) A representative of the health insurance industry;
- (vii) The Surgeon General appointed under § 20-7-103;
- (viii) A representative of the Arkansas Foundation for Medical Care;
- (ix) A representative of the Arkansas Hospital Association;
- (x) A representative of the Arkansas Medical Society;
- (xi) A representative of the Arkansas Minority Health Commission;
- (xii) A representative of the Arkansas Nurses Association;
- (xiii) A representative of the Arkansas Science and Technology Authority;
- (xiv) A representative of the Arkansas Pharmacists Association;
- (xv) A representative of the business community;
- (xvi) A representative of the Community Health Centers of Arkansas, Inc.;
- (xvii) A representative of the University of Arkansas for Medical Sciences;
- (xviii) A representative of the Arkansas Health Care Association; and
- (xix) Two (2) health care consumers.

(b) The Chair of the Health Information Exchange Council shall be elected by the members of the council.

(c) All members will serve until the time the non-profit corporation is formed and operational responsibility and authority for the State Health Alliance for Records Exchange is transferred to that nonprofit.

(d)(1) The State Health Alliance for Records Exchange is not a health care provider and is not subject to claims under § 16-114-201 et seq.

(2) A person who participates in or subscribes to the services or information provided by the State Health Alliance for Records Exchange shall not be liable in any action for damages or cost of any nature that results solely from the person's use or failure to use the State Health Alliance for Records Exchange information or data that was imputed or retrieved under the Health Insurance Portability and Accountability Act of 1996, as it existed on January 1, 2011, and regulations adopted under the act, state confidentiality laws and the rules of the State Health Alliance for Records Exchange as approved by the Office of Health Information Technology or the governing body of the nonprofit corporation.

(3) A person shall not be subject to antitrust or unfair competition liability based on membership or participation in the State Health Alliance for Records Exchange, which provides an essential governmental function for the public health and safety and enjoys state action immunity.

(e) A person who provides information and data to the State Health Alliance for Records Exchange retains a property right in the information or data but grants to the other participants or subscribers a nonexclusive license to retrieve and use that information or data under the Health Insurance Portability and Accountability Act of 1996, as it existed on January 1, 2011, and any amendments and regulations adopted under the act, state confidentiality laws, and the rules of the State Health Alliance for Records Exchange.

(f) All processes or software developed, designed, or purchased by the State Health Alliance for Records Exchange shall remain the property of the State Health Alliance for Records Exchange subject to use by participants or subscribers under the rules of the State Health Alliance for Records Exchange.

(g) Patient-specific protected health information shall be disclosed only in accordance with the patient's authorization or in compliance with state confidentiality laws and the Health Insurance Portability and Accountability Act of 1996, as it existed on January 1, 2011, and regulations under the act.

(h) No later than December 31, 2014, executive branch agencies, including state boards, commissions, nonprofit corporations, and institutions of higher education, that implement, acquire, or upgrade health information technology systems shall use health information technology systems and products that meet minimum standards adopted by the State Health Alliance for Records Exchange.

(i) All identified or deidentified health information contained in, stored in, submitted to, transferred by, or released from the State Health Alliance for Records Exchange is not disclosable under applicable state or federal law.

(j)(1) When the nonprofit corporation is formed, the State Health Alliance for Records Exchange shall be governed under the bylaws and incorporation documents of the corporation.

(2) The bylaws and incorporation documents of the corporation shall further only the objectives and policies set forth in this chapter.

History. Acts 2011, No. 891, § 1.

